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THE CASE OF WILLIAM PALMER.

The recent trial of William Palmer, for the murder of John Parsons Cook, deserves more than a passing notice. The extraordinary circumstances under which the crime was committed, the universal interest excited by it among all classes of persons in England, and the character of the trial, all combine to render the case one of uncommon importance to the whole community as well as to the legal profession.

Palmer, the convicted murderer, is a man about thirty-one years old. He was originally possessed of some property, received a good medical education, and began to practise as a physician. He married early in life a young girl, an heiress, and very soon abandoned the practice of his profession for the more exciting and congenial occupation of the turf. He owned race horses, attended all the races, and betted largely. In this pursuit he soon lost whatever fortune he had; and in the year 1853 was forced to raise money to enable him to carry on his racing speculations. To obtain funds he had recourse to usurers, and from one of these he obtained money at the enormous rate of sixty per cent. per annum. This rate of interest, which seems to men in legitimate business so frightful, is said by persons of experience to be rather a moderate premium for

loans made under such circumstances. The securities upon which these loans were made consisted of Palmer's notes, with the indorsement of his mother, a woman of considerable fortune. The indorsements, it appears, were not genuine, but were either forged by Palmer himself, or written by his wife, by his direction. His success on the turf did not furnish him with the means of paying these loans, and he was obliged to have recourse to other expedients. He procured an insurance of £13,000 upon the life of his wife, and in a few months she died. The insurance was paid to Palmer without objection, though since his arrest upon the charge of which he stands convicted, there have been grave suspicions that she died by no natural means, and he has been indicted for her murder. At a late date he procured a similar insurance of the same amount upon the life of his brother Walter, an uncertified bankrupt, who also died. The same suspicion exists in this case, though no bill has been found against Palmer. There is some evidence, also, that the original proposal was for an insurance of £1000, and that the amount of the proposal was altered by Palmer and a confederate, without the knowledge of his brother. About the time of Cook's death, Palmer was also endeavoring to effect a further insurance of £13,000 on the life of a man by the name of Bates, a *quasi* groom in his employ; but this scheme was not accomplished, and originated probably in the refusal of the insurers to pay the policy on the life of his brother.

Mr. John Parsons Cook, the victim of Palmer's crime, seems to have been rather a graceless youth, who, possessed of a fortune of about £12,000, and bred as an attorney, preferred a life of reckless dissipation and pleasure, and had been for some years a well-known racing man. He was an intimate of Palmer's, who seems to have been a popular man among his fellows, and Palmer and he had been concerned together in races and racing speculations.

On the 13th of last November, Cook's horse, the "Polestar," won the Shrewsbury Handicap, and at the same races Palmer's horse, "Chicken," was beaten. By this turn of fortune Cook was the winner of nearly £2000, and Palmer was a hopeless bankrupt. He owed his money-lender £13,000 upon the forged notes, and was daily pressed for payment, and threatened with suits against his mother upon her supposed indorsements. He had but a mere trifle at his banker's. The payment of the insurance upon his brother's life was refused, and he had no possible resource.

Under these circumstances, upon the theory of the prosecution, he determined to possess himself of all Cook's late winnings, of the horse Polestar, and whatever other property Cook might have; and by these means, if possible, to retrieve his condition, and for this purpose he compassed his death. It was urged by the defence, that Cook was his most intimate friend, that there had been previous transactions between them, that to save him from bankruptcy Cook was willing to furnish, and was actually lending him his recent gains, and that to no one was the death of Cook so great a misfortune as to Palmer, whose ruin became thereby inevitable. It is not material for us to discuss which of these theories was the most clearly supported by the evidence. It was shown that Palmer, during the week succeeding the races, while Cook was ill at Rugely, received some portion of the money that Cook had won, and applied it to the payment of his own debts; that he either fraudulently, or with Cook's consent, endeavored to obtain possession of other sums, and either procured or forged Cook's signature to an instrument acknowledging a large indebtedness to Palmer.

Passing from this to the other points of the case, it appears, that on the 5th of November Cook left London for Rugely, the town in which Palmer lived; that he was then in excellent health, though he had been suffering from sores in the throat, the result of previous dissipation, which, however, were rapidly disappearing; and that at midnight on Tuesday, November 20, he died in great agony, after a very short and sudden illness. A coroner's inquest was held, and the jury returned a verdict of wilful murder against William Palmer. The excitement in Staffordshire, in which county Rugely is situated, was so great, and the prejudice against Palmer so intense, that, on the suggestion of Lord Campbell, a special act of parliament was passed, allowing the prisoner the benefit of trial at the Metropolitan Court of the Old Bailey, in London, and providing that the expenses of the trial should be kept as a separate account by the proper officer; that this account should be transmitted to the authorities of Staffordshire; that all objections to any of its items should be made by them in twenty-four hours after receiving it; and that it should be paid by the county of Staffordshire. And at a later day the government directed the attorney-general, Sir Alexander Cockburn, to take charge of the prosecution, instead of leaving its management to counsel, to be employed by the private prosecu-

tor, as is usual in England. By the courtesy of the attorney-general, the counsel for the defence were fully informed beforehand of all the evidence for the prosecution, and on the 7th of May, after all this preparation, the trial came on in London before three judges, Lord Campbell, Baron Alderson, and Mr. Justice Cresswell. The leading counsel for Palmer was Mr. Shee, a barrister of considerable professional reputation, who evinced great ingenuity and boldness in his conduct of the cause, and whose argument for the defence, occupying eight hours in delivery, was extremely forcible and able. It is said that the prisoner's brief was offered to Sir Fitzroy Kelly, and that he demanded the enormous sum of 1000 guineas retainer, besides a very large fee for each day that the trial should continue, thus putting an effective prohibitory tariff upon his employment. The trial occupied twelve days, an unprecedented length of time for a criminal case in England. As the Old Bailey contains no accommodations for jurymen, the jury were kept at the London Coffee House, and were taken to the Temple Garden for a daily walk, attended service on Sunday at the Newgate Chapel, and were conveyed for a short excursion to the country. In the course of the trial, one of them made a pathetic appeal to Lord Campbell, for permission to go under the charge of an officer to visit his wife, who had been confined during his absence. This request, his lordship, hearing that the lady was doing very well, thought might furnish a bad precedent, if acceded to, and so refused.

Before proceeding to a statement of the evidence in the case, a brief description of the prison and the court, and the general appearance and conduct of the trial, may not be uninteresting.

The prison in which Palmer was confined was the Old Newgate prison, from which a private passage leads through the burial-ground where the bones of executed felons repose, and finally opens directly into the dock of the court-room; and through this Palmer was daily conducted. Both the bench and the bar wear wigs and gowns, as well as the sheriffs and the governor of the prison. These gowns vary in color and style, those of the judges are of blue cloth with broad pink cuffs, and a sort of red hood at the back. At the opening of the trial the judges all appear with bouquets, and the prisoner's bouquet, composed of rue, is strewn before him. The prisoner stands during the whole trial. The counsel for the crown open their case and intro-

duce their evidence. The counsel for the prisoner then makes his argument, and afterwards puts in his evidence. The counsel for the prosecution replies, and the judge sums up, reading all the evidence of importance from his notes, and thereupon charging the jury. The decided disadvantage of this course to the prisoner is of course very great in every case, particularly as by the custom of the English bar, his counsel must argue upon his brief without having seen a single witness; and it was especially injurious in this case, as the opening argument went far beyond the evidence, and as it gave the defence no opportunity to explain or argue away several defects in testimony and a very bad appearance on the part of some of the witnesses.

We have already stated the evidence of Palmer's pecuniary circumstances at the time of Cook's death, and the relations then existing between them.

From the other evidence in the case, it appeared that on the evening of the 14th of November, the day after his horse had won the race, Cook and Palmer were together at the inn at Shrewsbury; that Cook had been drinking somewhat, and was more or less affected by it, and that Palmer was seen mixing some colorless liquid in the passage-way leading to his room. Cook drank some brandy and water prepared by Palmer, and immediately exclaimed that there was something in it; that it burned his throat dreadfully; and that Palmer took the glass, and drank what was left; said there was nothing in it, and handed it to a third person to examine. Cook was very soon after taken sick and vomited badly; he sent for a physician, and took some medicine, but was better the next day, and out on the race-course. On Thursday evening, November 15, Cook arrived in company with Palmer at the inn at Rugely. He was not well, but was out the next day, dined with Palmer, and said he felt no worse for it. The next morning Palmer came to the inn to see him, and gave him some coffee, which Cook very soon vomited. On Sunday he sent Cook some broth, which the chambermaid of the inn tasted, and was very shortly afterwards taken ill.

On Monday Palmer went up to London on business. He had previously called a physician of Rugely to attend Cook, and on that day he wrote to Mr. Jones, of Lutterworth, another medical man, a friend of Cook's, telling him that Cook was ill with a bilious attack, and asking him to come to see him.

Having spent the day in London, he returned to Rugely

late at night, stopped at a druggist's, with whom he did not usually deal, and purchased three grains of strychnine, and either before or after this purchase went to the inn, saw Cook, and gave him some pills, the physician having prescribed and given to Palmer certain pills for Cook to take. In about an hour Cook, who had previously been ailing, rather than seriously ill, and who, in the course of the day had seen and talked with his jockey and trainer, and said he was much better, aroused all the occupants of the inn by ringing his bell violently, and by the cry of "Murder! Christ! Have mercy on my soul." The housekeeper and servants hastened to his room, and found him in great agony, beating the bed with his hands, and exclaiming that he should be suffocated. He directed them to send for Palmer, whose house was directly opposite the inn, and who came over immediately. The attack lasted about half an hour; during the whole of it Cook complained greatly of his dread lest he should suffocate; he was violently convulsed, and snapped at the glass and spoon in which a composing draught was offered him. Palmer was with him the whole time, and never left till nearly six o'clock on Tuesday.

On that morning, between eleven and twelve o'clock, Palmer purchased of another druggist six grains of strychnine and some opium. Cook was awake at noon, and wanted some coffee, and said he was better. About three o'clock, Mr. Jones, Cook's friend, to whom Palmer had written, arrived. He found Cook's symptoms very different from Palmer's description, and told Palmer so. In the evening the Rugely physician, Jones, and Palmer, had a consultation about Cook's case. Some pills were prepared for him by the Rugely practitioner and given to Palmer, and by him on the same night pills from the same box were administered to Cook. Mr. Jones was to sleep in Cook's room that night. Within an hour after taking the pills, Cook was attacked in the same manner as on the night before. Palmer was again sent for. He came almost immediately. Cook was violently convulsed, and complained of suffocation, and asked to be raised in bed, but was so rigid that this was impossible. At his own request he was turned upon his side, and very shortly died. When he died he was so rigid and his muscles were so contracted, that, as the witnesses testified, if laid upon his back only the head and heels would have come in contact with the bed. His feet were likewise very much arched, and his hands bent, and the women who laid out the body testified

to its extraordinary rigidity. The Rugely physician gave a certificate that Cook died from apoplexy, and no one seems to have had as yet any suspicion that there had been any foul play.

The next day but one, Mr. Stevens, Cook's stepfather, came down to Rugely. His failure to find Cook's betting-book, and Palmer's statement that he had a claim against Cook for about £4000, seems to have first led him to suspect that all was not right. He returned to London, came again to Rugely, and directed a post mortem examination. This took place in the presence of several medical men, among whom was Palmer. They found no symptoms of disease, except the old sores in the throat and some white granules at the lower part of the spine, and came to a result somewhat similar to that of the attending physician. The stomach and intestines were taken out and placed in a jar to be carried to London. Palmer said to the boy who was to drive Mr. Stevens with this jar to the station, "I'd give £10 to see the jar upset." The contents of the jar were sent to Dr. Taylor, an eminent chemist in London, for his analysis, and he was told generally the circumstances of Cook's death, and directed to search for poisons, without specially directing his inquiries to an examination for strychnine.

While Mr. Taylor's examination was going on, the coroner's jury was in session at Rugely, and Palmer sent to the coroner at least one present of game, anonymously, and wrote him one or more notes. He also bribed the postmaster, (whom he had previously solicited to witness Cook's name to a written admission of debt, which he had not seen signed,) to open Dr. Taylor's letter to the coroner stating the result of his investigations. These had resulted in the discovery of some antimony, but no strychnine, or prussic acid, or similar poison. And the defect of the evidence on this point was supplied by the testimony of medical men, that strychnine acts upon the system by absorption into the blood; is carried by the circulation to the nervous system; that through its influence on this the whole muscular system is violently and spasmodically contracted, convulsed, and stiffened, the muscles of the chest being especially affected, and that thus death is finally produced by suffocation; that only the excess of the poison beyond what is necessary to produce death is to be found in the stomach; and that where the minimum dose sufficient for this purpose has been given, of course no strychnine could be discovered there.

Eminent medical gentlemen also testified that there were three kinds of tetanus, or lockjaw; traumatic tetanus, or that proceeding from external wounds, and that this was never caused by such wounds as those old sores in Cook's throat; idiopathic tetanus, or that which came on without any external cause, a form almost unknown in England, but not uncommon in India among young children and women shortly after childbirth; and tetanus from strychnine. That the last form was clearly distinguishable from the others in several particulars, but especially in its duration. The first two occupying as many hours in their progress, as the latter minutes; and, that in their opinion, the symptoms of Cook's death were inconsistent with death from any other known cause than tetanus from strychnine. The same witnesses also testified that the generic distinction between the convulsions of tetanus and all other classes of convulsions, and particularly epileptic convulsions, was, that in tetanic convulsions alone did the sufferer retain his consciousness; and a note-book of Palmer's was produced, which had the leaf turned down at a page containing a description of death from strychnine. Persons who had actually witnessed deaths from strychnine were also introduced, and described the cases which they had seen; and upon this mass of evidence the prosecution rested its theory that Palmer killed Cook by first administering antimony as a preparative and irritant, and then poisoning him with strychnine.

The evidence for the defence, except the medical testimony, is not important. Much of it was weak; one witness at least proved himself untrustworthy. And as a whole, it fell far short of the previous statements in the learned serjeant's argument. The medical testimony was of two kinds; first, that of practitioners, who, having heard the evidence of the symptoms and manner of Cook's death, thought it attributable to some cause other than strychnine; and second, that of chemists, who questioned the accuracy of the evidence given for the prosecution as to the manner in which strychnine affects the system, and who testified positively that it could be discovered in all cases where it had been administered. With respect to the first class of evidence, it is enough to say that the witnesses were not, as appears by their own showing, men of eminence or first-rate ability in their profession; that but few of them were metropolitan practitioners, or had enjoyed any very large experience. Each of them explained Cook's death upon a

different theory, and most of them founded their theories upon solitary cases which had occurred in their own practice, the symptoms of which bore only a partial resemblance to Cook's, and about which all that could be said was, that in these cases it was not known that any poison had been taken. The evidence of the chemists seems to us even less satisfactory and convincing. Most of the witnesses testified that if strychnine had been administered it could be discovered in the system, but hesitated to say that it could certainly be found in the stomach. Some one or two testified that it could certainly be discovered there, but their testimony was marked by an evident bias and partisan spirit; and against it was to be set the statement of Dr. Taylor, a witness, we fear, almost equally biassed, that he had experimented on two rabbits, with very small doses, and had been unable to find the strychnine after death. In the cases, too, upon which these witnesses relied, the doses given had been excessive, making them easily distinguishable from the experiments of Dr. Taylor, and from the theory of the prosecution. And this whole evidence could be at once explained away by admitting that Dr. Taylor did not apply proper tests.

We do not propose to comment upon the charge of Lord Campbell. The solicitor for Palmer has made it the subject of an attack in the English papers, but the point raised is one of no general interest. It was very decidedly against the prisoner, and the jury, after an absence of little more than an hour, returned a verdict of guilty. The prisoner was immediately sentenced. It was ordered, in accordance with a provision of the special act passed with reference to the case, that Stafford should be the place of execution; and on the night of the same day he was conveyed by railway to Stafford jail.

After a careful examination of the whole evidence, the conviction seems to us right. Yet we feel very doubtful whether the result would have been the same in this country; and still more doubtful whether Palmer can be said to have had a fair trial according to the practice here. In spite of all that was done in this case to favor the prisoner, there is no question in our minds, that if such a trial had taken place here, the chances of an acquittal, and the advantages on the side of the prisoner, would have been increased tenfold; and this solely from the difference in the practice of law and the trial of criminal cases in the two countries. In the first place, the counsel could, with-

out violating professional decorum, have seen beforehand all his witnesses, — indeed he would have been faithless to his duty, if he had not seen them. In the second place, the argument for the defence would have been made after all the testimony was in, and could have been adapted to the case as it actually stood then; and the gain in these particulars is, in our opinion, almost inestimable. And in the third place, it seems to us, from the well-known practice of American judges, and their manner of charging juries, that the medical testimony, by far the most important in the case, both in a legal point of view, and in its bearing upon the prisoner, would have been much more thoroughly discussed and commented on than was thought necessary by Lord Campbell.

For more than four months the minds of the whole population of England have been in a state of feverish excitement about this case. For about that length of time the results of Dr. Taylor's analysis, which we have already stated, and his testimony subsequently given before the coroner's jury, that in his opinion Cook died from strychnine, have been generally known, and have been privately and publicly discussed by all the medical and scientific men in England. More than one review, and numerous newspapers and journals of greater magnitude, have treated of this matter in their columns, till nearly the whole public, as well as all the scientific men, had ranked themselves on the one side or the other of the controversy growing out of it; and thus hardly a medical witness who was examined came to the case entirely unprejudiced. Again, the discovery of poison in the system has been in England, heretofore, we believe, deemed an essential link in the evidence necessary for conviction, and this was not only wanting in Palmer's case, but after more than one analysis no poison had been found. The scientific witnesses also usually gave evidence of their opinion as to the cause of death from the symptoms testified to, as to the manner in which strychnine affects the system, and also as to the possibility of discovering it by analysis, after death. Now it is very evident that a witness may be perfectly competent to testify on one of these points, and his opinion on that be entitled to the greatest weight, when on the others it may be almost without value, and entitled to no weight whatever. Dr. Taylor, for instance, is a very eminent chemist, and his opinion on the possibility of discovering strychnine in the system deserves the most serious consideration. But when he comes

to tell us of the manner in which strychnine affects the system, and of the symptoms by which it manifests itself, his testimony ought to weigh very slightly. He has never seen a case of tetanus in the human subject, and only administered strychnine to a few rabbits, less than half a dozen in twice as many years. Now all these points should have been very carefully and minutely considered in the instructions to the jury. They should have received the gravest and most cautious consideration of the bench, and the importance of weighing with the utmost caution the scientific evidence in the case should have been brought home to every juryman. There seems to us to have been negligence and carelessness in this respect. And the verdict of the jury, though right in our opinion, was, we fear, a somewhat hasty one. A trial of twelve days, in which a vast multitude of complicated circumstantial evidence, and a quantity of perplexing and somewhat contradictory scientific testimony is introduced, would seem to require more than an hour's deliberation for a verdict, and especially for a verdict which sentences a fellow-creature to a felon's death.

We have said we thought the verdict right. The evidence with regard to the symptoms and the manner of Cook's death and other deaths from strychnine, seems to us exceedingly strong; and a medical friend, in whose opinion we have great confidence, informs us that Cook's death, though not in medical parlance "a type case," cannot, it seems to him, be explained on any other theory than that he had taken strychnine. Gentlemen of attainments in chemistry have told us that strychnine can in all cases be discovered in the system, if a proper analysis is made. But they say the blood is the best place to search for it, and Dr. Taylor had none of Cook's blood; and they say also, that none of his first examination was for the discovery of strychnine, and that it is by no means impossible that when he began to search for this, his previous experiments, and the tests already applied, had so altered the chemical condition of the parts sent him for analysis, that its discovery was no longer possible. To the testimony of the medical men are to be added the facts and circumstances developed by the other evidence. We have the motive in Palmer's pecuniary necessities, and the chance of relief which Cook's death would give. We find him with strychnine in his possession, and no explanation of its use. We have Cook's sudden death, with every appearance of death from strych-

nine, and Palmer's subsequent conduct — his attempt to bribe the post-boy, his presents to the coroner, his tampering with the postmaster, and numerous other circumstances, many of them trivial, but all pointing in one direction, and leading us inevitably to the conclusion, that William Palmer was guilty of the murder of John Parsons Cook.

NOTE. — Palmer has now been executed, but made no confession.

RECENT LEGISLATION IN MASSACHUSETTS.

THE session of the legislature of Massachusetts, which ended on the sixth day of June last, was longer by some thirteen days than the longest of its predecessors. Yet its record, in the form of public laws, is unusually small; they occupy, in the valuable edition of Mr. Dutton, considerably less than one half of the number of pages taken up by those of the year immediately preceding. We do not state this as a reproach upon the legislature. We do not happen to recollect what the precise causes of the great length of the session were; but we do not grudge any time that was spent in thorough and exhaustive discussions of such subjects and acts as the law-making power was called upon to consider. On the contrary, whatever is given to wisdom or deliberation, in the manufacture of that wisest and most important fabric, the laws of the commonwealth, is well worth the time spent in council.

The next most obvious remark upon the session is, that a great number of the laws of last year, no less than fifteen, are expressly altered, modified, or repealed, to say nothing of those more numerous probably, which are more or less varied without express reference in the body of the new law. This change of laws is not owing to any change of public policy; the same political party has governed the councils of the State, and the measures which can be called political, though not very numerous, are of the same general character with those of the year 1855. The changes we have referred to are almost entirely owing to the cause which we annually lament, the crude and hasty manner in which laws are made, both as to substance and manner. The fault of substance is only to be cured by sending to the legislature the most competent men who are willing to go, and making it incumbent on all who do go to attend to their duties

thoroughly and patiently. The fault of manner is akin to that of substance. New laws are passed without due and careful study of the laws to be altered or amended, without a sufficient appreciation of the true effect of the words employed, and of their bearing upon those of former acts. We alluded last year to a remedy which had been proposed by a distinguished reformer in England, namely, that a commission of suitable and skilful persons should be appointed by the executive, and not removable yearly, to form a sort of permanent committee of bills in the third reading, whose duty it should be to advise the legislature how best to express the meaning they intend to embody in a law, and what will be the bearing of that law on existing laws. We do not intend to discuss this proposition again at present, nor to propose a substitute, but merely to remind our readers once more of this practical evil, trusting that they will do what they can, in their several vocations, towards its remedy.

Passing to the results of the session, we find four political measures, which it is not in our province to discuss, but only to indicate. We mean the proposed amendments to the constitution of Massachusetts, which have passed the legislature by the requisite majority at this session, but which will require to be similarly passed next year, and to be ratified by the people, before becoming a part of the fundamental law. They are:

1. Every voter shall be able to read the English language, and write his own name.

2. Divides the State into districts for the election of two hundred and forty representatives.

3. Divides the State into forty single districts for election of senators.

4. No person of foreign birth shall have a right to vote or be eligible to any office unless resident in the State for fourteen years.

Turning next to the laws strictly so called, one of the earliest raises the salary of the justices of the Supreme Court, from three thousand dollars a year, at which sum it was fixed long since, when money was comparatively much more valuable than now, to four thousand, which is certainly not too large for the best legal ability of the commonwealth, and is less than some of the States give to the judges of their highest courts.

Chapter 308 enlarges the jurisdiction of the Superior Court of Suffolk county, so as to give it exclusive cog-

nizance of personal actions to the value of three thousand dollars.

The equity jurisdiction of the Supreme Court which was last year extended to all cases of fraud, is now (ch. 38) to include also cases of accident or mistake, thus giving at last, and apparently without much discussion, what has been so perseveringly sought for many years — full equity jurisdiction in this commonwealth. We have all of a court of equity now but the chancellor, and perhaps he is the only really objectionable part of the court. But to make the resemblance more perfect, it is provided by sect. 2 of the same chapter, what indeed had already been enacted in 1855, that suits in equity may be brought by bill as well as by writ.

Then there is a very considerable modification of the Insolvent Laws (ch. 284.) The jurisdiction is vested in courts of record, instead of commissioners, and the judges, one for each county, are to be appointed by the governor, to have liberal salaries, and to hold office during good behavior; with registers, also well paid, and required to keep all proper and useful dockets, indices, and records. The most obvious remark upon this arrangement is, that a recent amendment of the constitution having provided that commissioners of insolvency should be chosen by the people, it appears an evasion of that instrument to abolish the office by creating a new one with the same powers, and different tenure. If this were so, we should not favor it, for such action, though it cannot be shown to be technically unconstitutional, and there is precedent for it, we have ever considered of dangerous tendency, as all evasion is and must be. But in the present instance we believe that no evasion was intended, and we are not sure that any has been committed. The article of amendment was probably based upon the notion that commissioners of insolvency were not judicial officers; a supposition not to be entertained, on principle, but which seems to have been tacitly admitted by making the tenure one for years only, whereas all judicial officers must, by the constitution, hold during good behavior, and by suffering the executive to exercise, without question, the right of removal. The constitutional amendment, at any rate, adopted this view, by making the office elective, for that mode does not obtain in any judicial office in this commonwealth, and is not likely to at present, for we hope and believe it to be the firm and settled conviction of our people that the judicial tenure and

mode of appointment which we have always enjoyed are the best.

If then the constitution supposes that commissioners are ministerial and not judicial officers, we see no good reason why the legislature should not provide for judicial officers, upon whom to devolve the duties hitherto performed by commissioners, but which are, in their own nature, properly judicial. In other words, we believe the constitution may be fairly understood to apply to the persons who shall perform these duties so long as those persons shall be of a certain lesser and unjudicial dignity, and no longer.

We believe the alteration a very good one, if this objection is removed. Much, of course, will depend upon the appointments, and our present chief magistrate, who has had many more such appointments to make than any governor since the foundation of the commonwealth, appears to have chosen very well thus far. The Superior Court, for instance, is conceded to be composed of able and upright judges. We hope it will receive gradual accessions of jurisdiction. Why should it not take cognizance of pleas of land, and, to some extent, of equity?

The names of the judges recently appointed under the insolvent act will be found in another part of this journal. We are not, however, prepared to pass upon their merits, except to say that the gentleman nominated for Suffolk county has been a commissioner for some time, and given much satisfaction to the profession and the suitors. We believe this to be true of Norfolk and some other counties. Some of the gentlemen appointed cannot be said to have a wide reputation, but we dare to say they will gain one. Certain it is, that the salaries, which, upon the scale used in this State, are quite liberal for the duties required, would command a tolerably high order of talent and learning.

There are other provisions of this law which we can only glance at. They systematize and extend the prohibitions upon *preferences;* they render a creditor who has accepted a preference ineligible as assignee, and make it a misdemeanor, punishable by imprisonment, for the debtor to secrete or waste his books or estate after notice of the petition. They also forfeit the discharge of a debtor, who, being a merchant or tradesman, shall not have kept proper books of account, or who shall not have disclosed to his assignees, within one month after ascertaining it, the fact

of a false debt having been proved against his estate (§ 31.) The first of these two clauses appears to us unnecessarily harsh. We have known many an honest and deserving tradesman who did not keep what an accountant would consider proper books, and some who kept none at all; and every one who has had an extensive mercantile acquaintance must be able to recall readily similar instances. Some of the most successful and honorable merchants of this country have trusted to their memory and to loose memoranda for the record of their transactions. The act in general appears to have been drawn with care by some one not unmindful of the sacred rights of creditors.

There are a few more acts of general interest. Ch. 18 extends usefully the scope of the Statute of Frauds, by enacting that the evidence of a new or continuing promise to bind a debtor, who has received his discharge under any bankrupt or insolvent laws, must be in writing. Ch. 47, repealing an act of last year, gives the Supreme, Superior, and Common Pleas Courts jurisdiction of naturalization by proceedings in open court, to be made matter of record. Ch. 188 allows parties to be witnesses in their own favor, and to be called by the adverse parties, — a great change in the law, but one which we believe will work justice; it has been tried for several years, and generally approved, in England. We shall return to this subject at some future time, when we have more space to devote to it.

We have often expressed our regret that so much of the valuable time of the legislature should be given to matters of entirely private concern, and have suggested that for most of these, especially concerning private corporations, provision might be made by general laws. And this has been done to some extent. Another step in this direction has been taken this year, by permitting (ch. 215) persons to associate themselves, without a special act, and to become a body politic for educational, charitable, or religious purposes, by a mere agreement in writing. We think there should be some provision for a public record of the corporate name and objects, as is enjoined in the case of banks by St. 1851, ch. 133, sect. 4.

We observe but one other law of general interest. Ch. 252 is a revision of the laws on the subject of insurance companies. This subject was thoroughly and elaborately revised in 1854, and a law was then passed which it was supposed would prevent the necessity of such legislation on this subject for a few years at least. We have not

had time to compare that law with the present one, and cannot draw an elaborate comparison between them, but the later one appears less careful in detail and to have less real method than its predecessor, and we regret the frequent recurrence to codification and revision, an evil necessary, no doubt, to a considerable extent, but which at best is a trial of the time and patience of lawyers and clients, nullifies decisions of the courts, and stultifies the diligence of the student.

We have had time only to indicate to our readers the changes which the year has introduced into our law. We do not attempt to give a critical review of the laws, but merely to state generally what has been done, with such suggestions as readily occur upon it and upon the mode of its accomplishment. We shall probably extend our view in a similar manner to this year's legislation in some other quarters.

United States Court of Claims.

Notes of Recent Decisions in the United States Court of Claims.

OWNERS OF THE BRIG ARMSTRONG *v.* THE UNITED STATES.

Neutrals, their duties — Obligations of the U. S. towards citizens having claims on a foreign government.

The American private armed brig General Armstrong was attacked and destroyed by several British vessels of war, in the harbor of Fayal, in Sept., 1814, after a gallant defence. The Portuguese officials made no attempt to protect the brig, although she was warped under the guns of the castle. The government of the United States made continual claim on that of Portugal for redress and reimbursement to the owners of the brig, but at last, after about thirty years of controversy, referred the claim to the decision of an arbitrator, without the assent of the claimants, who were denied the privilege of being heard before, or having written arguments presented to the arbitrator. The arbitrator decided against the claim.

Held, that the United States were bound to make restitution to the owners of the brig.

Magruder v. The United States.

Officers — Extra pay.

Where an officer temporarily performs the duty belonging to one of a higher grade, he is entitled, by the act of March 3, 1835, (4 Stat. at Large, 756,) to the compensation belonging to such grade, unless it be shown that his thus acting was unnecessary or unreasonable; and it is not competent for an executive department to make such increased compensation depend upon a particular mode of appointment or of evidence.

Decatur v. The United States.

Capture — Prize.

The frigate Philadelphia was burned in the harbor of Tripoli by Lieutenant Decatur and his party, under peremptory orders from his commanding officer, that she should be destroyed and not taken: —

Held, that the frigate was not taken as prize within the meaning of the act of April 23, 1800 (2 Stat. at Large, 52), the taking having been *diverso intuitu*.

Baird v. The United States.

Office — Half-pay — Satisfaction by payment of a less sum.

A resolution of Congress passed September 30, 1780, provides for "the pay and establishment of the officers of the hospital department and medical staff," specifying, among others, "regimental surgeons."

October 3, 1780, a resolution was passed, providing for the reduction of certain regiments on the first of January then next, and that thereafter the army of the United States should consist of four regiments of cavalry or light dragoons, four regiments of artillery, forty-nine regiments of infantry, and one regiment of artificers, and that the regiment of artificers should consist of eight companies, and each company of sixty non-commissioned officers and privates.

January 17, 1781, a resolution was passed providing that all officers in the hospital department and medical staff, thereinafter mentioned, who should continue in service to the end of the war, or be reduced before that time as supernumeraries, should receive, during life, in lieu of half-pay, the following allowance, &c.: it then specified regimental surgeons, and gave them an allowance equal to the half-pay of a captain.

B. served as surgeon to the regiment of artificers, until he was discharged, on the reduction of his regiment, March 29, 1781: —

Held, that he was entitled to half-pay for life.

June 3, 1784, Congress provided that "an interest of six per cent. per annum should be allowed to all creditors of the United States for supplies furnished or services done from the time that the payment became due." They had previously resolved that the officers and others entitled to half-pay for life, should be entitled to receive at the end of the war their five years' full pay in lieu of the half-pay for life, "in money, that is, specie, or in securities at interest," as Congress should find most convenient.

B. applied for the benefit of this provision in 1794, and frequently thereafter, but his petition was never granted, and he died in 1805. His son and administrator, the present petitioner, also applied to Congress at sundry times from 1818. In 1836 an act was passed granting five years' full pay, as commutation, without interest. There was no proof that the petitioner consented to this as a compromise.

Held, that this grant did not bar the petitioner's claim, and that he was entitled to the half-pay to the time of B.'s death, and interest, less what he had received under the act of Congress.

White *v.* The United States.

Account — Mistake — Interest.

The claimant was for four years, ending in June, 1849, navy agent for the port of Baltimore, and acting purser of the naval school at Annapolis. He charged himself, as acting purser, with the sum of $561.10, as received from himself as navy agent, but neglected to credit himself as navy agent, with the payment. In June, 1849, certain sums which were charged in his accounts having been disallowed him, the treasury department caused a suit to be instituted against him. At the trial he first discovered the mistake of the $561.10, but it was not allowed by the court, because it had not been presented at the treasury department, and he withdrew the item, the court remarking that if the mistake existed it would undoubtedly be corrected by the accounting officers. He afterwards applied to the department for the payment of this sum. It was refused, on the erroneous supposition of the officers that it had been passed upon by the court.

Held, that the claimant could recover this sum, but, according to the decision of *Todd* v. *The United States*, 18 L. R. 626, without interest.

District Court of the United States. Massachusetts.

UNITED STATES, by information, *v.* THREE PARCELS OF EMBROIDERY.

In an information *in rem* for a forfeiture alleged to be incurred under the Collection Act of 1799, c. 22, § 66, it is essential to charge that the goods were entered under a false invoice, and that they were falsely invoiced with the design to evade the duties thereupon, or some part thereof.

Therefore, where such an information only alleged that the *entry* was made below the actual cost, with the design, &c., and the court instructed the jury that the invoice must be falsely made, and with the design to evade the duties, and the jury found for the plaintiffs, it was held that judgment must be arrested.

It seems that such an information should be brought in the name of the United States alone, without making the seizing officers parties.

THE facts in this case are stated in the opinion of the court; it was elaborately argued, at a former day, by Hon. *B. F. Hallett*, district-attorney, for the United States, and *Milton Andros*, Esq., for the claimant. The opinion of the court was delivered June 11, 1856, by

WARE, J. — An information was filed on the 4th of June, 1855, by the district-attorney, against three parcels of embroidery, imported into the port of Boston from Liverpool, England, as subject to forfeiture, for a violation of the 66th section of the Collection Law of 1799, ch. 22. It is filed "in the name and behalf, as well of the United States as of Charles H. Peaslee, collector of the port of Boston and Charlestown, in said district, and of all other persons concerned."

At the last term of the court the case was given to the jury, and they returned a verdict for the plaintiffs; a motion was then made (January 2,) by the counsel for the claimants, in arrest of judgment, for the supposed errors and insufficiency of the information, and several causes were assigned for the motion. The first in natural order, though not in that adopted in the motion, is, that there is a misjoinder of parties. The form in which the infomation is presented makes Peaslee, collector, as much a plaintiff as the United States. By the 88th section of the act, it is ordered thus: "All penalties accruing by any breach of this act shall be sued for and recovered in the name of the United States of America."

This is indeed an information *in rem* for a forfeiture,

but I can see no reason for a distinction in this respect, between a suit *in rem* for a forfeiture, and a suit *in personam* for a penalty; and certainly when a statute peremptorily requires a suit to be in the name of a particular plaintiff, it would seem to be the intention of the legislature that his name alone should stand as plaintiff on the record, and the inference would appear to be strengthened when that plaintiff is the United States.

The reason for making the collector a party is presumed to be because he is supposed to have an interest in the suit, and the technical reason on the general principles of law would be strong for making him and other officers of the customs, who share in the prosecution, parties, if they had an interest that was absolute and indefeasible. But their rights are precarious, and dependent entirely on the pleasure of the United States. Without their consent, their interest may be released at any time, even after judgment, and until the proceeds are paid over to the collector and ready for distribution. *McLane* v. *United States*, 6 Peters, 404; *United States* v. *Morris*, 10 Wheat. 288. The technical reason for the joinder therefore fails.

By the general provisions and policy of the law, as well as by the practice of the courts, the seizing officers have no authority, nor are they allowed ordinarily in any way, to interfere in the management of the suit through its whole progress from the beginning to the end. There is, therefore, no reason for making them joint plaintiffs, but an obvious impropriety in doing so. When a forfeiture is ascertained and declared, it accrues in law to the United States. They receive it under the law, partly to their own use and partly as trustee for those who are entitled under the law. But this peculiarity is attached to the trust, that the trustee is not compellable to execute it, but may at pleasure remit the whole forfeiture to the claimant.

This view of the subject also seems to me to be confirmed by the general character of our fiscal laws. The sole purpose of the penalties and forfeitures with which they are so profusely studded, is the protection of the revenue. It is no part of their object, in a just and legal sense, to enrich the officers of the customs. The shares allowed to them are not allowed as a part of their compensation, in a legal sense. Their services are compensated by their salaries, and their shares of forfeitures are pure gratuities given to quicken their diligence in the performance of duties for which they are otherwise fully paid. The

promises held out to them by the law are, in theory, promises without consideration, mere nude facts, and therefore, on general principles, are not binding upon the promissors. And they are not only so in theory, but so held in practice. A gift becomes irrevocable only when executed, when the thing is delivered; and the right of the officers of the customs to their shares in forfeitures, becomes perfect only after they are paid over. There are, therefore, no reasons so far as I can see, founded on general principles, why the seizing officer should be made a party plaintiff. There is a dictum in the case of *Gelston* v. *Hoyt*, 3 Wheat. 313, thrown out *arguendo*, that he may be a co-plaintiff. The question did not arise in the case, and it has not, therefore, the authority of a decision. The reason given for it is, that he has an interest in the case; but if I have a correct view of the law, it is not such an interest as entitles him to make himself a party; and if it be not, there is an obvious reason why he should not be clothed with the rights of a party to interpose in the management of the suit. And such appears to have been the course from the origin of the government. The direction of the first collection laws of 1789, ch. 5, § 36, was, that suits for penalties under that act should be in the name of the United States. This was copied into the amended act of 1790, ch. 35, § 69, and from that transferred to the last general collection law of 1799, ch. 22, § 88.

The same direction is given in the registry act of 1792, ch. 6, § 8, and in the act for enrolling and licensing vessels of 1789, ch. 11, § 21.

But however the law may be, the practice seems to have been various from an early time. In this district, it seems to have been customary for a long period, if not from the beginning, to join the collector in a libel of information, with the United States, and there is a precedent in Dunlap's Admiralty Practice, p. 372, said to have a very high authority, which is in exact conformity with this information. In the district of Maine, the only one of which I have any particular knowledge, the practice, until quite recently, was to bring the suit in the name of the United States alone. The district-attorney contends that the joinder is justified by long, if not immemorial usage, in this district, and that if in strict law it is open to objection, that the exception is declinatory in its nature, and is waived by going to trial on the merits, and cured by verdict. On the other hand, it is contended that the joinder being against the express words

of the statute, the exception is fatal at any stage of the suit, before final judgment.

I do not, however, find it necessary to decide the case on this question, because there is another ground on which, in my opinion, the judgment must be arrested.

The other causes assigned for the arrest of judgment, and which have been insisted upon in the argument, may all be resolved into one, and that is, that the offence is not set out in the information with that clearness and distinctness which is required by the rules of pleading and the practice of the courts. It was long ago held by the Supreme Court, that an information to recover a penalty under the collection act of 1799, is in the nature of a criminal proceeding. *Locke* v. *The United States*, 7 Cranch, 339; *Clifton* v. *The United States*, 4 How. 242. The description of the offence for which the penalty is demanded must have the same kind and degree of certainty that is ordinarily required in other criminal proceedings. And although it may be true, as is argued by the district-attorney, that in the practice of our courts, all that technical accuracy of description may not be required which is held to be essential in indictments, and even in the exchequer practice, in England, and that niceties need not be observed which rest on dry precedent, the reason of which has either ceased to exist or cannot now be discovered, it is still indispensable that every circumstance constituting the offence be clearly and distinctly set out in plain and direct averments. It is not sufficient to show that a man learned in the law may find in the information, by comparing one part with another, a full description of the offence. It is, I apprehend, necessary that the offence be charged in such plain and positive terms that a plain and unlearned man, *inops consilii*, may clearly understand, by reading the information, what is charged upon him, and to what he is required to answer, and so also, that a jury equally unlearned, may understand, from the information, what they have to pass upon. Guided by these principles, let us first look at the law which creates the offence, and then at the description of it in the information.

The language of the law is, "That if any goods, wares, or merchandise, of which entry shall have been made in the office of a collector, shall not be invoiced according to the actual cost thereof, at the place of exportation, with a design to evade the duties thereupon, or any part thereof, all such goods, wares, or merchandise, or the value thereof,

to be recovered of the person making the entry, shall be forfeited." It is very clear from this language that three facts must concur to complete the offence:

First, an entry must be made of the goods.

Second, they must be invoiced not according to their actual cost.

Third, they must be thus invoiced, with the design to evade the duties thereupon, or upon some part thereof.

Each of these facts must be found to entitle the plaintiffs to a verdict, and all of them being necessary to constitute the offence, each should be plainly and distinctly charged in the information.

To ascertain whether they are thus charged, let us look at the information. I read all that part which is descriptive of the offence. The allegation is, that an entry of these goods "was then and there, at Boston, May 26, 1855, made upon an invoice then and there produced, as and for the true invoice of said goods and merchandise according to law, when, in fact, the said entry was so made upon said invoice, below the actual cost of said goods at the place of export, and said entry was so made under the true value and cost of said goods, with the design then and there to evade the payment to the said United States, of that part of the duties chargeable according to law, upon the cost and value of said goods, which was chargeable upon the excess of said actual cost and value according to law, over and above the reduced and false value at which said goods were so entered, as aforesaid, the said goods, wares, and merchandise, being then and there imported into the United States from a foreign country, and being then and there liable to the payment of duties upon an entry upon an invoice according to their actual cost or true market value at the place of export."

Now to complete the offence, there must be undoubtedly a corrupt design to defraud the United States in the duties, and there must be some act done towards carrying that design into execution; and it appears to my mind quite clear, that in order to bring the case within the reason of the law, this design must have existed at the time of making the invoice, and that the invoice itself must be prepared and concocted for the purpose of carrying that design into effect. The criminality of the fraudulent design is attached to the making of the invoice, and not to the entry. The entry may be honestly made by an agent, who knows nothing of the fraudulent undervaluation; and if the forfeiture

attached to the criminal intent in the entry, it might easily be avoided by keeping the consignee in ignorance of the actual cost. To prevent this, the law fastens the forfeiture to the first act in the series, by which the fraud is intended to be perpetrated and by which it may be effected, though all the subsequent agents are innocent.

The case was so put to the jury, and they were told, before they could find a verdict for the plaintiffs, they must be satisfied not only that the invoice was false, but that it was made so with the design of defrauding the United States of the duties, or a portion of them. The jury may be presumed, under the instruction of the court, to have found the fact, although it is not distinctly charged in the information.

And I now come to the question, Whether there is any sufficient allegation in the information, that the goods were not invoiced according to their actual cost, with the design to evade the payment of the duties, or any part thereof? And I think there is not. The information seems to have been framed on the idea that the forfeiture attached to the design of fraud in making the entry. The entry is charged to be made on said invoice, below the actual cost. What invoice is here meant?

It is described above as an invoice produced, as and for the true invoice. But it is not declared to be false, except by way of inference; again, it is charged that the entry was made with a design to evade the duties; but it is nowhere distinctly and plainly charged that a false invoice was made with that design. Under this section of the statute, it appears to me that this design in making the invoice is an essential part of the offence. If it is so, the rules of pleading require that it be distinctly alleged. If it be said that the jury, under the direction of the court, found the fact, it is still true that by the strict rules of pleading in penal causes, the plaintiff can recover only according to his allegation as well as his proofs.

My opinion on the whole, is, that judgment must be arrested.

District Court of the United States, Massachusetts. May Term, 1856.

JESSE COFFIN, 2d, libellant, *v.* JOHN H. SHAW. — "The Alabama."

A father shipped his son, a minor, under the age of seventeen, by a contract in the common form, for a whaling voyage to the Pacific Ocean and elsewhere. The son faithfully did duty during the whole period of his minority, and afterwards deserted before the termination of the voyage: —

Held, that the desertion did not forfeit the wages of the son during his minority, which were due to the father. The obligations of the father's contract terminated with his son's minority, and his responsibility for his acts ceased at the same time.

A simple promise by one of the act of another person who is *sui juris* is void. But a contract of guaranty or suretyship for the act of another if on a sufficient consideration, is valid.

In this case no such guaranty being proved, it could not be presumed.

THE facts in this case are stated in the opinion of the court. It was argued by *A. S. Cushman*, for the libellant, and *J. C. Stone*, for the respondent.

WARE, J. — This is a libel brought by Jesse Coffin, to recover, against the owners of the ship Alabama, of Nantucket, the lay or wages earned by George M. Coffin, his son, in a whaling voyage described in the shipping-paper as a voyage to the Pacific Ocean and elsewhere. There is no controversy as to the facts in the case. It is admitted that George M. Coffin was at the time of the contract a minor; that he was regularly shipped by the libellant, his father, for the voyage, on the 26th of May, 1846, as a cooper; that his lay or wages was to be one seventy-fifth of the proceeds of the cruise; that he proceeded on the voyage and faithfully and with full an ordinary share of ability performed the service for which he was engaged, and remained in the ship till the 21st of November, 1850, four years and within a few days of six months. It is also admitted that he then deserted, while the vessel lay at the Sandwich Islands, the voyage or cruise not being at the time completed. The cause or inducement to the desertion is proved by the libellant's own witness. Not long before that time the discovery had been made of the great mineral riches of California. The tempting prospect of sudden and easily acquired wealth was too strong for the young man, and he abandoned the ship for the purpose of seeking a fortune

among the gold mines of this new El Dorado. He had no cause of complaint against the master or the vessel, and he deserted purely from motives of interest in the calculation of finding a more lucrative employment. It was, therefore, a desertion not only without justification, but without palliation.

In every age of the maritime law a wanton and wilful desertion before the termination of the voyage has been held to work a forfeiture of all wages antecedently earned. In the case of *Gifford* v. *Kollock*, Law Reporter for May, 1855, p. 21, I thought, though this was the general rule, that the law was not imperative on the court to inflict the entire forfeiture; but when the desertion was attended by extenuating circumstances, not amounting to a justification, these circumstances might be taken into consideration, and the penalty mitigated to a reasonable deduction from the wages, or even to a case of mere compensation and indemnity to the owners for the actual damage sustained. Perhaps when the desertion is proved precisely according to the requirements of the act of 1790, ch. 29, § 5, Stats. at Large, vol. 1, p. 133, it may be otherwise. It may be that the act makes it a statute penalty, and by its terms takes from the court all power of qualifying the offence, and reducing the penalty in consideration of palliating circumstances, that do not constitute a full justification. The facts of the case did not call for the expression of an opinion on that point. But to the doctrine held in that case I still adhere. In the present, however, there were no extenuating circumstances. The desertion was not only without justification but without palliation.

But there is another admitted fact to be adverted to in this case, and it is the only one that creates any difficulty in my mind. This boy was shipped by his father while he was a minor. During his minority he was earning wages for his father's benefit, and working out his contract. And while that continued his father must be held so far responsible for his conduct, that any act in breach of the contract which legally affected the right to wages is imputable to him. But the desertion took place on the 21st of November, 1850, and the boy arrived at the age of twenty-one on the 17th day of the preceding August, and thence ceased to be under the parental power. He then ceased to earn wages for his father, was entitled to his own earnings, and became alone responsible for his own acts. The shipping contract made by his father then terminated by operation

of law, and up to that time there had been no forfeiture. The father had then acquired all the rights he could acquire under the contract, and as he had no longer any right of control over his son, he ceased to be responsible for his acts. How then could his rights be affected by any subsequent acts, or how can there be a burden of a contract that no longer existed, but which was dissolved by operation of law? It appears to me that there is but one possible condition of the contract by which he could be so affected.

It is a principle of common sense and natural justice, as well as of law, that contracts have their effects, both of benefit and burden, of right and obligation, only between the parties. No one can stipulate or promise but for himself. A promise that another shall give a particular thing, or do a particular act, is simply void, conferring no right and producing no obligation. It is an exception to the rule, when the person whose act is promised is under the control of the promisor; as if he promises the acts of a hired servant in his employment, the promise binds him as if he had promised his own act; or if he promises the acts of a minor, being an apprentice or a child, as in this case. 6 Touiller, Droit Civil Français, No. 136. The libellant, in his character of a parent, had the right of control over his son, and if he engaged by this contract that his son should faithfully serve the owners as a cooper in the voyage, as he must be considered to have done, he will be equally affected by a breach of this engagement by his child as if he had promised his own personal act and violated his promise, and must bear the legal consequences of such violation. But his responsibility lasted only as long as his contract, and that terminated with his son's minority.

But though the simple promise of the act of another is merely void, and neither binds the promisor nor the person whose act is promised, by varying the form of the engagement, it may become binding on the promisor. The distinction is succinctly and clearly expressed in the Institutes of Justinian: "If one promises that another shall give or do anything he is not bound, as if he promises that Titius shall give five pieces of gold. But if he promises that he will take care or cause that Titius gives it, he is bound." *Si quis alium daturum facturumve quid spoponderit, non obligabitur, veluti si spondeat Titius quinque aureos daturum. Quod si effecturum se ut Titius darel, spoponderit, obligatur.* Lib. 3, 203. He then promises not for another but for himself, and as persons are not presumed to trifle in business

transactions with nugatory promises, a person will easily be presumed to mean by such a promise that he will be surety for the one whose act is promised, when the circumstances are such as to favor the presumption and not to bring it into doubt. Pothier, Obligations, No. 56. In stating the general principle that one can stipulate or promise but for himself, I have borrowed the language of the Roman law, because it is put into a neat and succinct formula. But the general rule is as true in our law as in that of Rome, for it is founded in the nature of things. There are exceptions in both, but they do not reach the present case.

It was, doubtless, competent for the libellant to engage in the event that the voyage should not be ended when his son attained his majority, and to bind himself as a surety for him that he should continue in the vessel and faithfully do duty until the final termination of the voyage, and to make himself responsible for any forfeiture his son might incur, and it is only by such an engagement that he could be affected by acts of his son after his parental authority ceased. The owners might have stipulated for such a promise, and it would have been binding on the promisor. But the circumstances must be peculiar to authorize the presumption of such an engagement without direct evidence, and surely it will not be presumed against probability. Are the circumstances of this case such that an engagement of this kind can fairly and reasonably be inferred? I think not.

To authorize such a presumption, we must suppose that the parties at the time of the contract contemplated the contingency that the voyage might not be completed until after the son had passed his minority. But more than four years of his minority yet remained, and it is agreed that the ordinary length of whaling voyages in 1846 was three years, and that they never exceeded four. The supposition is, therefore, not only without probability but against it, and there is no direct evidence tending to show that the possibility that the voyage might outlast the boy's minority occurred to the minds of either party. The case then stands on the naked facts and the law applicable to them. My opinion is, that the obligations of the shipping contract made by the father terminated, by the understanding of the parties, as they certainly did in law, when the son attained his majority; and that the rights acquired by the father,

during his minority, cannot be affected by any act of the son after the parental authority terminated, and he became *sui juris.*

Decree for libellant.

Supreme Court of Pennsylvania.

Notes of Recent Cases in Supreme Court of Pennsylvania.

These notes are condensed from the opinions of the courts as published in the *Legal Intelligencer.* This very useful little paper is the *gazette* of Philadelphia, and publishes, by authority, all legal notices required to be made in the county where it is issued. It gives also all the public laws as soon as passed, and early notes of decisions. Its value to readers at a distance would be much increased by inserting a short abstract of the facts in all cases where the opinion of the court does not sufficiently show them. This is now done in some cases, but not universally.

Paul *v.* Carver.

Deed — Construction.

The general rule that title passes to the centre of a street or road applies where the measurements of the deed bring the line to the side of a street or road. *Union Burial Ground* v. *Robinson,* 5 Whart. 18, explained.

Albright *v.* Lapp.

A justice of the peace has no power to punish contempts summarily by commitment.

Sanford *v.* The Catawissa, Williamsport, and Erie Rail road Company.

Carrier — Illegal contract.

A contract made by a railroad corporation, by which they agree to give an express company the exclusive right of the railroad for all express purposes for three years; *held,* void, and ordered to be cancelled.

Mohney *v.* Cook.

Action.

One who erects an unlawful obstruction in a navigable stream, and thereby occasions damage to another, cannot defend by showing that the party injured was, at the time of injury, unlawfully engaged in worldly business on the Lord's day.

Burr *v.* Burr.

Statute of Limitations — New promise.

Action on a promissory note held by the plaintiff, and signed by her son, the defendant's intestate: Plea — the statute of limitations. The plaintiff proved a payment of money to her by her son, within the time of limitation, and under the following circumstances: The parties were together in a room, and the plaintiff said, "Israel, can thee let me have a little interest-money on the note I hold of thine?" He said: "How much would thee like, mother?" She said: "Four or five dollars." He gave her seven, which she said was sufficient for the present. There was no evidence that the plaintiff held any other note of the defendant's intestate. *Held*, reversing the judgment of the district court of Philadelphia, that the debt to which the payment was to be applied was not sufficiently identified.

Williamson *v.* The Trustees of the Fire Association of Philadelphia.

Fire insurance — Prohibited articles.

Three adjoining houses were insured in one policy, for a stated sum on each; all were injured by the explosion of gunpowder kept in one of them, without the knowledge or assent of the insurers and without the knowledge of the owner of the houses, which were let to separate tenants. By a condition annexed to the policy, the keeping of gunpowder was forbidden.

Held, the insurers were not liable for the injury to any of the houses.

Main *v.* Warner.

Fraudulent conveyance — Existing creditor — Judgment lien.

A conveyance of real estate from a father to his son in part consideration that the son should sustain his father and mother, is fraudulent in law against the existing creditors of the father, unless it is shown that the father is still possessed of property sufficient to discharge his debts.

One whose demand against the grantor was based upon a letter

of recommendation given by the grantee to his son before the conveyance, but upon which a recovery was had subsequently thereto, is such a creditor.

A judgment entered against a father in his lifetime is a lien upon lands fraudulently conveyed by the father to his son, either before or after the entry of the judgment, although the judgment was not revived within five years after its entry, nor within five years after the death of the father.

Bolton, Christman & Co.'s Appeal.

Lien of material men — Entire contract — Book charges.

To render valid a lien for materials furnished for the erection of a building, the claim must be filed within six months from the delivery of the materials; but where the delivery is in pursuance of an entire contract, the limitation does not begin to run until the contract is performed.

A book of original entries kept by a paper-hanger, is evidence of the amount of paper furnished and labor bestowed in putting it upon the walls, if the entry is made as soon as the quantity of paper and the amount of work done in using are ascertained by the completion of the work, although this extended over several days.

Guy *v.* McIlree.

Insolvent — Fraudulent assignment.

A confession of judgment by A., a debtor in failing circumstances, in favor of B. in trust for certain laborers, to whom A. owed several small sums, is not an assignment for the benefit of creditors, under the statute regulating such instruments.

Barker *v.* McFerran.

Will — Probate — Presumption.

By the law of Pennsylvania, probate of a will of real estate before the register, is *primâ facie* evidence of the devise. This presumption is not rebutted by showing that the will purported to be signed and sealed by the testator, but also had his mark affixed to it, that two of the witnesses were dead, and the third only capable of authenticating his own signature. The presumption remains that the will was duly signed, and the mark will be rejected as surplusage.

Martin *v.* Baily.

Will — After-acquired property — Power to sell.

A statute declares that "real estate acquired by a testator after

making his will shall pass by a general devise unless a contrary intent be manifest from the face of the will" : —

Held, affirming *Roney* v. *Stiltz*, 5 Whart. 385, that a power to sell operates on after-acquired property.

Superior Court of Suffolk County, Massachusetts. May Term, 1856.

LEMUEL GILBERT, Petitioner, *v.* ERASTUS W. SANBORN.

It seems that this court can punish summarily, for a contempt, an officer who uses the process of the court illegally and oppressively, with intent to vex and injure the party complaining, as by retaining possession of the warehouse of a debtor for an unreasonable time, after making an attachment of his goods, and being notified to remove them.

But such oppression is not shown to exist by merely proving that possession was retained for six days; the articles being numerous and difficult of removal; and those of the complainant, the debtor, having been mixed, by his consent, with other like articles belonging to another person, the debtor not having pointed out to the officer which of the goods were subject to the attachment.

THIS case was argued before all the judges of the court on the day of June, 1856, by *E. F. Hodges*, Esq., for the petitioner, and *H. L. Hazleton*, Esq., for the respondent. The facts appear sufficiently in the opinion, which was delivered by

ABBOTT, J.—This was an application to punish the defendant for a contempt of court. From the petition, respondent's answer, affidavits and agreement of parties, the facts upon which the court are asked to interpose and deal with the respondent as guilty of a contempt of their authority, are substantially these: On the 5th of May, 1856, the Bass River Bank sued out a writ of attachment from this court against Gilbert, the petitioner, and put it into the hands of the respondent, Sanborn, a deputy-sheriff, for service, who, on the next day, attached a large number of piano-fortes, finished and unfinished, in Gilbert's warehouse, and left a keeper there to maintain his possession. On the 7th of May the petitioner Gilbert notified Sanborn, both in writing and verbally, to quit his premises, and remove any goods he had attached. On the same day, one Keith also notified Sanborn that he held three mortgages upon portions of the attached property,

given him by Gilbert, by which all the property in the warehouse on the 20th of December, 1855, was conveyed to him, and that all the rest of the attached property he claimed as his own, in which Gilbert never had any interest. Neither Keith nor Gilbert gave the defendant any means of ascertaining what parts of the property were included in the mortgages, and what parts belonged to Keith absolutely. The petitioner's application for an attachment against the respondent for a contempt was filed on the 12th of May. Sanborn in his answer swears that the mortgaged property and that belonging absolutely to Keith, were so intermingled, and this was not denied, that it required time to make the separation; and that he had not kept the property on the petitioner's premises an unreasonable time. He also purges himself by his oath from any intentional contempt of the authority of the court.

Upon these facts two questions arise; first, Does this court possess the power to punish, as a contempt, the wilful abuse of its process by an officer of the law, to whom it is committed for service? and secondly, If the court is clothed with such power, whether a case is made out here for its exercise?

The first and more general question is certainly one of much practical importance, and we are not aware that there has been any express decision bearing directly upon it, in this commonwealth: certainly, the power claimed to exist here has not been exercised in any case known to us, for the oppressive and illegal acts of an officer in attaching property upon mesne process. The fact that it has not been exercised is not conclusive to show that it does not exist; but should certainly induce a more careful examination of the reasons and grounds upon which it is claimed to be based. Upon a careful examination of the principles and authorities governing and applicable to courts of justice and contempts of their authority, we are satisfied, in the first place, that a wrong and oppressive act, wilfully done by an officer, in serving the process of this court, under color of his office and the process committed to him, is a contempt; and secondly, for such an act, the court have power to bring the officer before them in a summary manner, and punish him by fine or even by imprisonment. The most elementary principles applicable to courts of justice clothe them with power to punish for contempt, as incident to and necessary for their very existence; the only real question that can arise in any particular case, is

not upon the existence of the genuine power, but whether the facts established call for its exercise.

It is by no means necessary that the act claimed to constitute a contempt should be done in the presence of the court, or even while it is in session. It will immediately suggest itself to all, that there are many acts, settled to be contempts, by well known and recognized rules of law, which are not done in presence of the court or while it is in session. Indeed, the rule seems to be this. Anything wilfully and designedly done, for the purpose of insulting and degrading the court, in the exercise of its legal powers, or to hinder, impede, or prevent its proper legitimate action in the discharge of its duties, is a contempt which may be punished summarily without resorting to the ordinary and usual modes provided for the trial and punishment of crimes. Without this power it might be impossible for courts to proceed in the discharge of their duties; the mere fact of its being known to exist, would, without doubt, generally obviate any necessity for its exercise; but when the occasion calls it into action, it is due to the proper administration of justice, that it should be exercised promptly and without hesitation or delay. Indeed the right, or rather the duty of courts to punish summarily for contempt is analogous to and quite as necessary for the protection of their official life and independent action, as the right of self-defence is to the individual. In both cases, it is not only a right, but a duty which the highest and most universal considerations of a social and public character impose upon courts and men; and a prompt and fearless discharge of it, when the occasion arises, will undoubtedly render those occasions quite unfrequent.

That a wilful abuse of the process of the court by an officer intrusted with its execution, is a contempt, cannot and ought not to be questioned. It behoves the court to see to it, that their process, to which, if legal, all are bound to submit, should never be wilfully abused by an officer, whose duty it is to act in exact subordination to the law; and if such process is ever used as a color for the doing of acts illegal and unjustifiable, it is the highest contempt of the authority and character of the court, for it is vouching in their power for the purpose of doing a wilful wrong. What can possibly more tend to insult the court, or be more hazardous to the proper administration of justice, than that an officer should call to his aid the authority and process of the court, in doing a wrong and oppressive act?

It is an attempt to make the court aiders and abettors in the wrong, and unless they have power to punish, and promptly exercise it, the result would be that the administration of justice would itself justly fall into contempt. It is to be feared, that at times officers permit themselves to be used in the discharge of their duties by dishonest and grasping parties, to gain some advantage by abuse and oppression which could not otherwise be obtained; in such cases it should be distinctly understood, not only that the power exists in the court to punish summarily, but that it will always be promptly exercised. Both principle and authority unite to sustain the existence of this power. 1 Gabb. Crim. Law, 285; Hawkins, P. C., B. 2, ch. 22, § 12; Bac. Abr. Attachment, A.; 7 Dane's Abr. ch. 220, § 28; *Yates' Case*, 4 John. R. 317; *Yates* v. *Lansing*, 9 John. R. 395.

It may be urged, that extending this power of punishing for contempt to wrongful acts in the execution of process, will be inconvenient, and render it necessary for the court to pass upon many questions of fact really in dispute. If this was so, it would be no reason why the power should not be exercised, if legally resting with the court. But there is no such danger. The court will not resort to punishment except in a case of clear, wilful wrong, and where there can be no real dispute in reference to the facts; they will not attempt to find contempt where none is intended, or undertake to decide in cases where the facts are really in dispute between the officer and the complaining party, the officer claiming on his side the existence of circumstances which would render his acts legal. Generally, we think, it would be sufficient, if upon a complaint against an officer for contempt founded on the wrongful execution of process from the court, if he should, in his answer, purge himself from intentional wrong, and claim that he was in good faith acting upon a state of facts which he had reason to believe existed, and which, if he could establish, would render his conduct justifiable; at any rate, such an answer would make a case, where the burden would be on the other side to show clearly that the claim of right was only fraudulent and colorable. In order to make out contempt against an officer, merely showing a tort or trespass will not be sufficient; for such acts, unaccompanied with anything else, the court will leave the parties to settle their rights by a resort to the ordinary remedies. In order to call into action the power to punish for contempt, the tort must be accompanied with proof that the officer has know-

ingly abused his authority, or used the process of the court as a cover for doing acts which he knew to be illegal or oppressive. Each case must stand or fall upon its own merits; applying to the facts proved a sound discretion, there can be no danger that this summary process will be used in improper cases. That it should be resorted to, and the power to punish exercised promptly, in all cases where it can be established that an officer has permitted himself to be used by unscrupulous parties, to obtain undue advantages by an oppressive and abusive exercise of his authority in the service of process, we think no one will be disposed to doubt.

The remaining question, whether the facts proved here make out a case for the interposition of the court, presents no considerable difficulty. Applying to the facts proved the rules which should govern cases of this kind and which we have already indicated, it would seem quite plain that no contempt has been in this case sufficiently established by the evidence. It is undoubtedly true, that an officer has no right to hold and use the shop or buildings of one whose personal property he attaches for the purpose of keeping and storing the property so taken: he is bound to remove it, if required, within a reasonable time; but it is equally true, that after such attachment, he has a right to keep it on the defendant's premises, where he finds it, such time as would be reasonably and fairly sufficient for him to properly remove it to a safe place. This length of time is to be determined by all the surrounding facts in each case; the kind and character of the property attached, its situation, the means at hand to remove it, the greater or less time required to find a proper place of storage, and all elements to be appreciated in settling the question of the reasonable time in each case. In looking at the facts proved here, we cannot say affirmatively that six days, considering the kind of property attached, would be an unreasonable time to keep it on the debtor's premises before removal; nothing has been put in evidence but mere lapse of that time, and we can only say that such evidence alone is not sufficient, we must have other facts, before we can affirmatively declare there has been such a wilful wrong, as would amount to contempt; the time proved may or may not have been unreasonable, depending upon a variety of other facts not before us. We by no means intend to say that an officer has the right to keep attached property on the debtor's premises for six days in all cases; all we intend

to decide is, that under the circumstances proved here, we are not satisfied that the respondent has been guilty of contempt. He may have rendered himself liable in damages for a tort, upon which we do not intend, nor indeed is it necessary, to give an opinion. But there is another fact proved and admitted, which certainly has a considerable bearing upon the question of reasonable time. A portion of the property attached, although mortgaged, was subject to be taken by the officer, and a portion belonged absolutely to Keith, but both portions were so intermingled that some time was required to separate them. The petitioner permitted, then, his property to be mingled with Keith's, so that the officer had the right to attach both portions, and would not be in the wrong till he had time to make a separation. Nor was he obliged, we think, to remove any portion of the property, under the circumstances, till he had a reasonable time to separate what he had a right to hold, from that belonging to Keith. He had no means of making the division, that is, of knowing under which of the titles the different articles were held; and before Gilbert can complain of the officer, it was his duty, having the knowledge, to point out, at least, what property was his and what was not. He chooses, however, not to do it, and having so neglected, we think he cannot with justice, claim that the officer, by merely keeping a person in his warehouse, for six days, doing no unnecessary injury to his possession or business, has been guilty of such a wilful abuse of the process of this court, as would amount to a contempt. The petition must be dismissed.

Notes of Recent English Decisions.

Court of Chancery (Ireland). Friday, February 8, 1856.

CLELAND *v.* LEECH.

Solicitor — Liability for misrepresentation.

Where a solicitor made a *bonâ fide* representation to one whose professional adviser he was, as to the adequacy of a particular estate, on the security of which money was about to be loaned, and the estate proved to be insufficient: —

Held, that the solicitor was liable to indemnify the person to whom the untrue representation was made, for the loss he sustained thereby.

Rolls' Court. April 17, 18, *and* 19, 1856.

Re RADCLIFFE.

Mortgagee's costs.

If a mortgagee assign his security without the knowledge of the mortgagor, he cannot charge the costs of the transfer upon the mortgaged premises.

V. C. Wood's Court. December 22 *and* 23, 1855.

RADWORTH *v.* PARKER.

Rule in equity as to provisoes limiting the time for execution in composition deeds.

It is a rule in equity that, although composition deeds may contain certain provisoes that they are to be executed by the creditors within a limited time, they are nevertheless to be construed with latitude; and it is not necessary in equity for a creditor to seal and deliver the deed, provided he indicates, within due time, his assent to the terms of it, and his intention to act under it.

Court of Exchequer. Wednesday, April 16, 1856.

MUMFORD AND OTHERS *v.* THE OXFORD, WORCESTER, AND WOLVERHAMPTON RAILWAY COMPANY.

Nuisance — Action by reversioner.

In an action by a reversioner for damage to his property in erecting a nuisance, it is requisite to prove that the nuisance is of a permanent nature, and so to be continued as to injure the reversionary interest, and whether it is so or not, is a question for the court.

Quære, whether a mortgagor who has let out the premises to a tenant has such a reversion as to entitle him to bring the action?

V. C. Wood's Court. February 15 *and* 20, 1856.

RODDAM *v.* MORLEY.

Statute of Limitations — Bond debt — Payment of interest by tenant for life.

By 3 & 4 Will. 4, c. 42, all actions upon bonds, &c., are barred after twenty years, except where "any acknowledgment shall have

been made, either by writing signed by the party liable, or his agent, or by part payment, or part satisfaction on account of any principal or interest being due thereon." The party alone making the acknowledgment, and who is liable for the debt, is within this exception. Therefore, payment of interest on such a debt by one who is tenant for life under the will of the debtor, does not take the case out of the statute as against the remainder-man.

Although a bond-debt may be said to be payable out of real estate, in the sense that the real estate is assets for the payment of it, it is not a charge upon the land within the meaning of the 40th section of 3 & 4 Will. 4, c. 27, which provides that "no action or suit, or other proceeding, shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twenty years, etc., unless, etc."

Rolls' Court. March 4, 5, *and* 18, 1856.

Hodgson *v.* Smithson.

Construction of will — Children "living."

A testator bequeathed stock in trust for his wife for life, and after her decease one-half to M., or in case of her decease, to be equally divided "between her children living."

M. died in the testator's lifetime, leaving one child, B., who died before the testator's widow: —

Held, that B. took a vested interest in the fund.

In the case of a gift to a class after a gift to a particular legatee, the class is to be ascertained at the death of the particular legatee, provided the legatee has survived the testator; if not, it will be ascertained at the death of the testator.

Ive v. *King*, 6 Beav. 46, affirmed.

"Living," in this clause, was held to mean living at the death of the parent M.

Court of Queen's Bench. Monday, April 21, 1856.

Marquand *v.* Banner.

Charter-party — Ownership pro hac vice — Shippers and ship-owner.

Where it was stipulated by charter-party that the vessel should receive and take on board from the charterers, (who were to have "the full reach of the vessel's hold, from bulkhead to bulkhead, including the half deck,") a full cargo, and that such goods only as the charterers should direct were to be received on board; the master, at the charterer's request, to sign bills of lading for the same "in the usual and customary manner, and at any rate of

freight that may be filled and made payable in any manner the charterers may choose, without prejudice to this charter;" and it was agreed that the charterers should have the option of naming the lumpers and stevedores, the ship to pay the former, the charterers the latter; and a lump sum was to be paid for freight; part of which was to be received by the captain abroad, and the residue at the port of loading, within three months from the day of sailing: —

Held, that the charterers were the owners *pro hac vice* of the ship; that the master, in signing bills of lading, acted as their agent, and not as agent for the ship-owner; and that, consequently, although the charterers had stopped payment, the ship-owner was not entitled to claim from the ship-owners the amount of unpaid freight.

Court of Appeal in Chancery. January 28, 29, *and March* 18, 1856.

ROBINSON *v.* WHEELWRIGHT.

Married woman — Anticipation — Power of Court of Equity.

A testator left a legacy to his daughter on condition that she and her husband should give up and convey all his, her, and their interest in a small parcel of land, which had been settled upon her for life, without the power of anticipation: —

Held, that the court could not assist her to comply with the condition.

April 19. *Re* ADAMSON'S PATENT.

Patent — Dedication to public.

Where an inventor had used his invention in public for four months, the court refused to order his patent to be sealed.

Exchequer Chamber. April 29, 1856.

ALLEN *v.* THOMPSON.

Bill of sale — Who is not a gentleman.

An act of Parliament (17 & 18 Vict. c. 36) requires bills of sale to be registered, together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same: —

Held, that to describe a clerk in the audit office as "a gentleman" in such an affidavit, rendered the bill of sale void.

Common Bench. April 22, 1856.

BURT v. HASLETT.

Landlord and tenant — Covenant to repair.

Where a tenant covenanted to leave the premises in repair, "together with all wainscots, windows, &c., and other things which at the time of the demise or at any time thereafter should be thereunto affixed or belonging," and upon entering removed the ordinary shop window, and substituted a plate glass front, which was kept in its place by means of wedges, but without screws, nails, or glue, and could be removed entire: —

Held, that this was a window within the meaning of the covenant, and that the tenant was not entitled to remove it at the end of the term, although he restored the original shop sash window.

Rolls' Court. February 20, 21, *and March* 17, 1856.

PRATT v. MATHEW.

Settlement — "Unmarried" — Illegitimate children.

By an ante-nuptial settlement a fund was limited to the wife for life, and then to the husband for life, and after the death of the survivor, upon trust for the children of the marriage, to be vested at twenty-one or marriage; but if the issue should die without having acquired vested interests, and in case the wife should die in the lifetime of her husband, then upon trust for the next of kin of the wife, "as if she had died unmarried and intestate."

The wife died in the lifetime of her husband, leaving one child, who died without having acquired a vested interest: —

Held, that "unmarried" meant not being under coverture at the time of her death, (that is, to exclude marital rights only,) and that the representatives of the child took the fund.

A testator who had gone through the form of marriage with his deceased wife's sister, (such marriage being illegal in England,) and lived with her as his wife till his death, by his will devised to "my wife" for life, and after her decease "for all and every my children hereafter to be born." He had no children at the date of the will, but two days after a child was born to him by his reputed wife: —

Held, that the reputed wife was sufficiently designated, and would take a life interest; but that the child could not take, because not identified as the individual intended, and a gift to illegitimate children to be born is invalid.

Queen's Bench. April 30, 1856.

SIEVEKING *v.* SMITH.

Ships and shipping — Duty of master — Freight.

Where a ship at a foreign port is by charter-party to land there, and proceed with the cargo to such one of a certain class of ports as shall be ordered by the shipper, the master is not bound to wait more than a reasonable time for orders, and if none arrive within that time, he is not bound to communicate with the shipper before sailing, but may proceed to such port, within the enumerated class, as he may reasonably consider the best for the ship.

Queen's Bench. April 21, 1856.

BURNS *v.* HOLMWOOD.

Marine insurance — Deviation.

Policy on goods for a voyage "at and from Liverpool to Cardiff, whilst there, and thence to all or any part or parts, place or places, islands and settlements on the west coast of America, in the Pacific, and seas adjacent, particularly Acupulco and Panama, on the outward voyage, and the Chincha Islands, on the homeward, backward and forward, or forward and backward, in any order or succession, during the vessel's stay, trading, discharging and loading there, and thence back to a port or ports of discharge in the United Kingdom." The vessel sailed on her voyage and arrived at Callao, proceeded to the Chincha Islands, and took a full cargo of guano, with which she returned to Callao. Thence she cleared out for the homeward voyage; but after she had been at sea a day or two she sprung a leak, and was compelled to return to Callao. It then became necessary to unload the cargo, which was of very little value there, and was sold for less than it cost to take it out of the vessel.

The cargo having been sold, and the vessel repaired, the master returned to the Chincha Islands and took another cargo of guano, with which he proceeded homeward. A loss subsequently happened: —

Held, a clear case of deviation, because the vessel had once begun her homeward voyage.

May 1, 1856. HALLHEAD *v.* YOUNG.

Marine insurance — Profit on goods — When policy attaches.

A policy of insurance on profit on cargo, at and from New York to Quebec, during her stay there, and thence to some port in the United Kingdom, "beginning the adventure upon the goods from

the loading thereof," is, in effect, a policy upon goods, and does not attach until they are loaded on board.

Nor can the construction of the policy be varied by showing that the underwriters knew, before effecting the policy, that the vessel was to be loaded at Quebec. *M'Swinney* v. *The Royal Exchange Insurance Company*, 14 Q. B., 634, followed.

Common Bench. April 28, *and May* 7.

Clementson *v.* Hudson.

Charter-party — Evidence to explain "regular turn" of loading.

By charter-party it was agreed that the vessel should load "with all possible dispatch in the south dock at Sunderland, in the customary manner, a full and complete cargo of coke, to be loaded in regular turn," &c. : —

Held, that the defendant, in an action against him for not using proper dispatch, could give in evidence a custom of the port, tending to explain the meaning of the words "regular turn."

Court of Queen's Bench. May 2, 1856.

Tayleur *v.* Blythe.

Contract — Condition precedent.

The plaintiff agreed to build a ship for the defendant, the work to be approved by G., and his certificate obtained. The work was to be paid for in instalments, the last instalment on the ship being delivered complete. The ship on being finished was delivered and accepted, but the certificate of G. was not obtained : —

Held, the obtaining G.'s certificate was not a condition precedent to the payment of the last instalment.

Moss *v.* Thorniley.

Churchwarden — Lien.

A churchwarden has no lien on the parish books for moneys expended by him for the use of the parish.

Jewell *v.* Stead.

Measurement of distance.

A turnpike act enacted that no toll should be taken within three miles of B. : —

Held, that the distance was to be measured in a straight line on the horizontal plane from point to point, and not by the road in existence when the act was passed.

Court of Queen's Bench. April 26, 1856.

M'GREGOR *v.* RHODES.

Bill of exchange — Evidence.

A declaration by indorsee of bill of exchange against indorser averred an indorsement from the drawer, who was also payee, to the defendant, and from the defendant to the plaintiff. The defendant traversed the indorsement from the drawer to himself, but not his own indorsement: —

Held, a bad plea. (CROMPTON, J., dissentiente, because defendant may traverse the mode in which plaintiff's title is stated.)

Judicial Committee of the Privy Council, April 3, 1856.

CASTRIQUE *v.* BUTTIGIEG.

Bill of exchange — Principal and agent — Liability of agent indorsing to principal.

A., a merchant in London, sent funds to B., a merchant in Malta, and requested him to purchase a bill of exchange for his (A.'s) account. The bill was drawn on a firm in Glasgow, payable to B.'s order, and by him indorsed to A.; it was accepted by the drawee, but dishonored at maturity, and duly protested, with notice to B. A. sued B. on his indorsement.

Sir W. H. MAULE delivered the opinion of the court, and said that the general law merchant must govern this case, and that by that law an agent did not render himself liable to his principal by indorsing to the latter a bill brought for him, in the absence of circumstances to show that such liability was intended. He distinguished the case from *Goupy* v. *Harden*, 7 Taunt. 159. In that case (said the learned judge) there were circumstances which tended to show that the defendant meant to make himself personally liable, and a special jury of merchants having found for the plaintiff, the court would not disturb the verdict.

The liability of an indorser to his immediate indorsee arises out of a contract between them, and this contract is shown not exclusively by the indorsement, although that is necessary to the existence of the contract, but also by the intention with which the delivery was made, as evidenced by words written or spoken at the time, and by the circumstances under which it is made, and the mode of dealing between the parties.

Queen's Bench. May 5, 1856.

Perin *v.* Camprell.

Contract — Conditional signature and delivery.

Upon the trial of an action on a written agreement, evidence is admissible under *non-assumpsit*, to show that the defendant signed and delivered the document upon the understanding between the parties that it was not to operate as an agreement until a certain condition had been performed. The jury should be cautioned to regard with scrupulous suspicion the evidence adduced to prove such an arrangement.

May 7. Wickenden *v.* Webster.

Lease — Covenant not to carry on trade, &c.

A covenant in a lease not to convert the premises into a shop or public house, or suffer any public trade or business to be carried on therein, but to use the same as a private dwelling-house only, is broken by using them as a day school for young ladies, with dancing and singing classes.

Exchequer. April 30.

Wood *v.* Bletcher.

Pleading — Debt.

Where one makes a purchase, and the article is paid for on the spot, there is no debt incurred, and no occasion for a plea of payment.

May 3. Dobson *v.* Collis.

Statute of Frauds — Contract defeasible.

In October, 1854, a verbal contract was made between A. & B. that A. should serve B. until September 1, 1855, and for a year thereafter, unless the employment was determined by three months' notice to be given by either party: —

Held, that this was within the 4th section of the Statute of Frauds, as an agreement not to be performed within a year.

May 7. *Re* James Freestone.

Indictment — Gaming in a railway carriage.

An act of parliament prohibits gaming in any street, road, highway, or other open or public place. Under this act a person was convicted of gaming in a railway carriage on the Brighton railway,

but there was no allegation that the carriage was a public carriage, or that it contained passengers, or that it was at the time of the supposed offence in a public highway: —

Held, that the conviction could not be sustained.

Crown Cases Reserved.

April 26. REG. *v.* LEECH.

Indictment — False pretences — Venue.

A letter containing a false pretence was received by the prosecutor through the post in the borough of C., but was written and posted out of the borough. The prosecutor, in consequence of the letter, sent to the writer, by post, an order for 20*l.*, which was received out of the borough: —

Held, in an indictment against the writer of the first letter, for obtaining money under false pretences, that the venue was well laid in the borough of C.

Court of Appeal (in Chancery). Feburary 25 *and* 26, *and March* 8, 1856.

WRIGHT *v.* VANDERPLANK.

Constructive fraud — Parental influence — Acquiescence.

A daughter, a few months after she had attained majority, made a gift to her father of a life interest in real estate. She was afterwards married, and she and her husband executed a post-nuptial settlement of the same lands, "subject to the life interest" of the father therein. She died eight years after her majority, without having taken any measures to impeach the gift. Her husband filed a bill two years after her death, to set aside the gift: —

Held, that although the gift was originally impeachable by the daughter, there were circumstances of acquiescence both by her and her husband which showed a deliberate intention that the transaction should not be disturbed: and the bill was dismissed.

No positive act of confirmation is necessary in such a case.

A gift from child to parent is void in equity if obtained by parental influence; and such influence is presumed while the child is under the dominion of the parent. But a subsequent acquiescence may confirm the gift.

March 12 *and April* 15. BESSANT *v.* NOBLE.

Will — Next of kin — Exoneration.

A testator devised real estate to trustees, upon trust for one of his sons, with an ulterior trust in case his son should die under 25,

without issue, in favor of "such person, as at the time of such failure of issue should be his (the testator's) next of kin, according to the statute made for the distribution of intestate's estates, and as if the testator had survived" his son. He also left personal estate in trust for a daughter, and in case she should leave no children her surviving, "in trust for the testator's next of kin in manner aforesaid": —

Held, that the words "next of kin in manner aforesaid," did not mean next of kin living at the testator's death, but at the time of the happening of the event provided for.

A testator, by his will, gave a legacy of stock, to be raised out of his general estate, and by a codicil directed that if, at the time of his death, he had not so much stock, the deficiency was to be made good out of the rents and profits of his freehold and leasehold estates, which were given to his wife for life, with devises of the estates over: —

Held, varying the decision of the vice-chancellor, that the general estate was exonerated, and only the rents and profits of the freehold and leasehold estates, accruing during the life of the wife.

V. C. Stuart's Court. April 18.

SOUTH *v.* SEARLE.

Issue.

"Issue of the body of M. S. by her husband," in a deed of trust, held to include grandchildren.

Rolls' Court. March 17 *and* 19, 1856.

HUMPHREY *v.* RICHARDS.

Husband and wife — Separate estate — Power of disposal.

By a marriage settlement, property was vested in trustees in trust for the wife for her separate use for life, without anticipation and with power of disposal. The wife invested in the names of her trustees certain savings of her income, and she had in her possession at the time of her death the halves of certain bank notes given for dividends, the other halves being in the hands of her trustees. After her death various sums of money were found secreted in different parts of the house.

The wife made a will appointing the trust fund comprised in the settlement, and made a residuary bequest of all the residue, &c., of her personal estate: —

Held, that both the savings which she had invested, and the dividend in her possession at the time of her death, passed by her will, as being within the equity of her power; but that it did not sufficiently appear that the money found secreted was part of her separate estate, and it must, therefore, unless further proof were adduced, be decreed to belong to her husband.

Common Bench. April 25 and 30, 1856.

Revis *v.* Smith.

Defamation — Evidence given in a judicial proceeding protected.

The declaration alleged that the plaintiff was an auctioneer, and that in the course of proceedings in a suit in the Court of Chancery it had been proposed to employ him to sell a certain estate; that the defendant, who was a party to said proceedings, falsely and maliciously and without probable cause, went before a commissioner for taking oaths in said court, and then and there falsely &c., published a deposition injurious to the character of the plaintiff, (setting it out with proper innuendoes,) whereby the court was induced not to employ the plaintiff, and he was damaged, &c.

Held, on demurrer to the declaration, that the action could not be maintained, there being no allegation that the defendant did not believe he was speaking the truth, in which case he would clearly be privileged.

May 6. Parker *v.* The Midland Railway Company.

Railway company — Station grounds.

A railway company is not liable in an action by a common carrier of goods and passengers for refusing to admit him within the precincts of one of their stations, when bringing passengers to the railway, although they admitted others in like circumstances.

Exchequer. February 6, 7, and 20.

Alston *v.* Herring.

Charter-party — Pleading — Causa causans — Circuity of action.

Declaration on a charter-party, by which it was agreed between the plaintiff, the charterer, and the defendant, the ship-owner, that the plaintiff should load a full and complete cargo for a certain voyage, with an allegation that certain of the goods shipped pursuant to the charter and under a bill of lading, were delivered in a damaged condition.

Plea, that a portion of the cargo was shipped by persons trading under the name of Milne and Company; that part of the goods so shipped by them was sulphuric acid in packages; that according to the usage among shippers, it was the duty of the plaintiff to declare that the packages so shipped contained sulphuric acid; that no such declaration was made; that the packages containing the sulphuric acid were placed above the injured goods; and that it was by reason of leakage in such packages that the damage was occasioned. The plea then stated that the damages that would be recovered by the plaintiff in this action would be the same sum of money that

the defendant would be entitled to recover in an action against the plaintiff for breach of duty in not declaring the nature of the goods pursuant to the custom.

Held, that the plaintiff was not the direct cause of the damage complained of in the sense of the rule laid down in Shep. Touch. 174; Com. Dig. tit. "Condition," L. 6, which bars a recovery only where the obligee or covenantee does the very act complained of and actually prevents the performance, where he is the proximate and not the remote cause, the *causa causans*, not meaning the *causa sine qua non;* also, that the amount of damage to be recovered by the defendant against the plaintiff was not necessarily in law the same amount as that to which the plaintiff was entitled, and, therefore, the plea was bad on demurrer.

Rolls' Court. February 25, 26 *and* 29.

***Re* Bright's Trustees.**

Incumbrances — Priority — Notice.

B., who was entitled to a contingent reversionary share in a fund, executed an assignment to K., of "so much of his share as would amount to 923*l.*," and by the same deed covenanted to insure his life for that amount against that of the party entitled to the interest of the fund for life, and to pay the premiums on the policy, and declared that any premiums paid by K. should be a charge on the whole of his share. K. gave notice to the trustees of the fund of the assignment by B. to him of so much of B.'s share, but not of the covenant to insure and the charge on the share in respect of premiums. Subsequently B. incumbered his share.

Held, that the covenant created a separate and distinct charge on the fund, and not one which was merely auxiliary to the principal dealing with the fund in such a sense as to be essential in order to make the assignment effectual. Hence notice of the assignment was not notice of the charge, and subsequent incumbrancers without notice were entitled to priority over K.'s claim in respect of premiums paid by him upon the policy.

Miscellany.

JUDICIAL APPOINTMENTS AND ELECTIONS.

Connecticut. — Elected by the legislature to be chief-justice of the Supreme Court of Errors, William L. Storrs.

Rhode Island. — Elected by the legislature to be chief-justice of the Supreme Court, Samuel Ames.

Both of the above selections are said to be highly satisfactory and judicious.

JUDICIAL APPOINTMENTS IN MASSACHUSETTS. — To be judge of the Court of Common Pleas, *vice* Horatio Byington, deceased, David Aiken, of Northampton.

To be judges of Insolvency, under Stat. 1856, ch. 284:

For Suffolk county,	Isaac Ames, of Boston.
" Middlesex "	Luther J. Fletcher, of Lowell.
" Worcester "	Alexander H. Bullock, of Worcester.
" Essex "	Henry B. Fernald, of Newburyport.
" Norfolk "	Francis Hilliard, of Roxbury.
" Berkshire "	Henry S. Briggs, of Pittsfield.
" Bristol "	Joshua C. Stone, of New Bedford.
" Plymouth "	David Perkins, of Bridgewater.
" Hampshire "	Horace I. Hodges, of Northampton.
" Hampden "	John M. Stebbins, of Springfield.
" Franklin "	Horatio G. Newcomb, of Greenfield.
" Barnstable "	S. M. Small, of Barnstable.
" Nantucket "	Edward M. Gardner, of Nantucket.

A PUGNACIOUS JUDGE. — We cut the following from the newspapers: Hugh C. Murray, chief-justice of the Supreme Court of California, was fined by the city recorder of Sacramento, on Thursday last, in the sum of fifty dollars and costs, for assault and battery committed on the person of Thomas Hill. What the circumstances of that assault were will be seen by the following paragraph from the *Sacramento Tribune:* "A difficulty occurred last evening, Tuesday, in this city, (Sacramento) between Judge Murray and Mr. Thomas Hill, of the firm of Hill, Clark & Co. The circumstances, as they have been detailed to us, are briefly these: Judge Murray, accompanied by two or three other gentlemen, went to the office of Hill, Clark & Co., where they found Mr. Hill. Judge Murray said to him, 'I understand that you made the remark that I was the meanest man that ever occupied the position which I sustain. Did you say so?' Mr. Hill replied, 'I do not recollect what I did say,' whereupon Judge Murray seized him by the collar to drag him out of the office, and upon using his hands to prevent it, struck him a blow over the head with his cane. At this moment a crowd rushed in, and the difficulty terminated. We understand there will be a judicial investigation of the case. We further understand that the affair grew out of some remarks made by Mr. Hill in relation to the discussion between Col. Zabriskie and Mr. Bates, on Saturday evening."

Fairfield, Ill., June 6, 1856.

A ABSENTEES. — EDITOR OF LAW REPORTER. Dear Sir: Scenes frequently occur in court which are of a character to excite the laughter of the spectators. A little incident of this kind lately occurred in Illinois, which, at the same time that it caused amusement for the bystanders, also showed the intelligence of one of the officers of the court. Some jurors were absent; and the judge directed the sheriff to call absentees at the door. The sheriff commenced calling, "*Absentees, Absentees, Absentees, Esquire.*" This singular mistake called down a shout of laughter, which all the gravity of the court could not for some time control. B.

ARREST OF JUDGMENT. — A lawyer practising in the courts of one of the States is reported to have recently moved in arrest of judgment to a conviction for an assault with a dangerous weapon, that an axe, the instrument proved to have been employed, is not a dangerous weapon. The learned counsel is said to have said, that the deed was not shown to have been committed with a broad-axe, a pole-axe, or a battle-axe; and that to assert that the axe of civilized life, the humble but efficient instrument of

the hardy and peaceful pioneer, was to lay the axe at the root of republican liberty.

We regret that we have not been furnished with a report of the remarks of the learned judge, who was called upon to consider the motion. He may have said that there were many axes, not enumerated by the learned counsel, which were yet of dangerous and hostile tendency: for example, the old Ajax of history. Whatever he said, we believe he overruled the motion. We have not heard whether the case was taken before the Court of Appeal.

Jack at all Trades. — We copy the following from the *Law Times*. It is said to be a correct transcript from a sign-board to be seen in or near London:

THE EASTERN COUNTIES GENERAL AGENCY OFFICE.

H. H. PIKE, Esquire,

BARRISTER, PROFESSOR AT LAW and CHAMBER COUNSEL.
GENERAL LAW ADVISER to Noblemen, Corporations, Companies and others.
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GENERAL ADVISER to Executors and Administrators, and also upon usual matters in DOCTORS' COMMONS.
MONEY TRANSACTIONS effected.

N. B. SEAMENS' AGENT for Salvage, &c., &c., &c.

Notices of New Publications.

GRAHAM AND WATERMAN ON NEW TRIALS, I. II. III.

The above title is taken from the backs of three volumes, lately given to the profession by Thomas W. Waterman, Esq., of the New York bar. They have no claim to be considered as one entire work, beyond what may be founded on their being thus lettered, and being sold together. The first volume is simply a reprint of Mr. Graham's work, — published in 1834, — "revised and corrected," as the title-page informs us; but we have not been able to find in what respect. Several cases omitted in the Table, in the first edition, are still wanting here. The second and third volumes form a separate work by Mr. Waterman, furnished with a title-page, contents, and table of their own.

Of the first volume we have but little to say. Its merits and its faults are familiar to our readers. The former are such, that it has been constantly referred to and cited since its publication, as a high authority in the branch of the law of which it treats. As to its faults, they were such as would have readily disappeared under the hand of a skilful and conscientious editor, — such as faults of arrangement and classification, omissions in the table, &c. In the twenty years that have passed since it was published, a vast number of decisions has been given in our courts, which would add greatly to its usefulness, if embodied into the text or thrown into the form of foot-notes. But Mr. Waterman was not disposed

to be satisfied with the subordinate position of an editor. He has chosen to make a new book. How he has done this, we shall state as briefly as possible.

But, in the first place, if he intended to write a treatise on New Trials, why did he not publish it as an independent work? Why tack it on to a book of established reputation, which covered the same ground? Mr. Waterman can best answer these questions. We can only say that if he had published his two volumes alone, and without making any arrangement with Mr Graham's family, we should have been sorry to be retained as his counsel, had an action for breach of copyright been brought against him.* But he has seen fit to publish them with Mr. Graham's. We must take them as we find them.

Page after page of the first volume is reprinted verbatim in the second; and not unfrequently, they re-appear again in the last volume. We must find room for an example or two:

"*Douglass* v. *Tousey*. *Per Cur.* 'The defendant also asks to have the verdict set aside on the ground of irregularity. *It was late in the evening* when the cause was committed to the jury. The judge, without the expressed consent of the counsel, directed them to seal up their verdict and bring it into court the next morning. They presented their sealed verdict according to the direction of the court, and when polled, one of them refused to agree to it. When asked why he signed the verdict, he said he was unwell, and unable to sit up all night. The judge sent the jury out again, and they finally brought in the same verdict which they had signed and sealed the evening previous. The juror who had dissented from the sealed verdict, stated to the court that he had received such explanation of the testimony from his fellows, that he was *satisfied with the verdict*.' In the case of *Bunn* v. *Hoyt*, a question arose," &c. (I. p. 93.)

"*Douglass* v. *Tousey*. *It was late in the evening*," [&c. verbatim as above, as far as] "*satisfied with the verdict*." [Here the quotation stops, and Mr. Waterman goes on thus:] "In the case of *Bunn* v. *Hoyt*, a question arose," &c. [the words being almost identical with those used by the court in *Douglass* v. *Tousey*] (II. p. 548.)

"When some of the jury disagree to the verdict after it is announced, it will nevertheless be sustained, if they subsequently agree to it. In *Douglass v. Tousey*, *it was late*," &c. [as before, to *satisfied with the verdict*.] (III. p. 1398.) And here again, *Bunn* v. *Hoyt*, omitted in the opinion of the court, happens to follow in Mr. Waterman's book. Our readers will understand that, in all these places, the point illustrated by the case is the same. Again:

"When the facts on which the witnesses found their testimony are clearly falsified by affidavit, the verdict will be set aside. In *Lister* v. *Mundell*, . . . The court observed that, though it is unusual to grant a new trial on evidence contradicting the testimony on which the verdict has proceeded, discovered subsequent to the trial, yet as the very facts on which these witnesses founded themselves are falsified by the affidavits produced, it affords a sufficient ground for a new trial." (I. p. 233.) The rule and an *abstract* of this opinion is repeated, (I. p. 500.) The rule and the *whole* quotation is given again (III. p. 988.) And again (III. p. 1081); and the rule, yet once more, (III. p. 1328.)

We cannot afford room to follow any more of these repetitions at length. But we ask any of our readers who may think we speak too harshly, to compare these places: *Allen* v. *Young* (I. 234, II. 638, III. 990, 1215; *Morrell* v. *Kimball*, I. 244, III. 995); followed in both instances by *Proctor* v. *Simmons*, *Norris* v. *Badger* (I. 243, II. 646, 648): *Thurtell* v. *Beaumont* (1. 169, III. 995, 1030); *Edmonson* v. *Machell* (I. 302, III.

863, 867); *Houghton* v. *Slack* (II. 44, 52); *People* v. *Olcott* (II. 123, 130); *Jackson* v. *Malin* (III. 935, 936.) See also III. 1419, 1426; and also I. 4, 5, and II. 41, 42; and also II. 40, where a quotation from Blackstone, already given (I. 5), re-appears as the author's own.

Indeed, we may say that the first chapter of Mr. Waterman's first volume (II), is hardly more than an amplification of Graham's Introduction — following the same track at greater length, but we think not more clearly. A great deal of room is devoted to remarks on the constitutional right to trial by jury in the various States, quotations from their constitutions, &c., all of which strike us as out of place and useless. Throughout there are constant proofs that the author's desire was certainly not to make his work as compact as possible. We have noticed many repetitions, but without exhausting the list of those which we happened to detect, which amount to *over fifty pages of verbatim* repetitions. Many more no doubt exist which escaped our notice. And when to these are added such entirely superfluous matter as quotations from Paley's Moral Philosophy on the Obligation of Oaths (II. c. 4); Disquisitions on the Importance of the Competency of Jurors; That the public should have confidence in Jurors; On their Qualifications by Statutes; On Want of Freehold Qualification, (c. 5); On Embracery, and its Punishment, by various laws (c. 6); Extracts from Kent and Blackstone, on the Natural Duty of Parents to maintain their Minor Children (III. 888); — then we begin to see how the work was swollen to such unwieldy proportions. Its size is also greatly increased, its usefulness certainly not proportionately, by dividing it into so many different heads, preceded by "General Remarks," which might have been almost all omitted without loss. Many of the repetitions are directly due to the great number of these divisions; and where the author was doubtful under which of several heads a case ought to stand, he has too often adopted the easy plan of placing it under all. For example: c. XI. § XII., "Absence of testimony," and § XIII. "Testimony omitted at trial" must necessarily contain much repetition, if both are fully treated; so, of the heads, "Hypothetical opinion," "Opinion based upon rumor," "Opinion formed from newspapers" (II. c. 7); and so of a hundred instances.

We suppose Mr. Waterman would answer our charge against him of having made a good part of his volumes out of Mr. Graham's, by saying that the repetitions consist of cases which were not original in Graham, and which he had as good a right to quote as Mr. Graham himself. But, in the first place, the repetitions are not *all* of cases. In the second place, supposing Mr. Waterman to have accidentally selected cases which Mr. Graham had used before, he should have abandoned them if he intended to join the two works, for it is clearly useless to have the same case twice repeated, and worse than useless to have so many repeated as greatly to increase the size and cost of the book.

But we are sorry to say that the supposition, that the coincidences between the first and the last two volumes are accidental, is one that we cannot entertain. In vol. III. p. 931, the case of *Warren* v. *Fuzz* is repeated from I. p. 210; and in a note *five other* cases are cited, which are *all* to be found in I. p. 210, and *in the same order*. We are compelled to believe, therefore, that when Mr. Waterman wrote this 931st page of the third volume, he had the first volume open before him at the 210th page, and knew that this was all repetition, and voluntarily took the cases from the first volume. Indeed, he must have been aware of all the repetitions of *cases*, for all those we have pointed out are contained in the Table, with reference to each of the places where they are cited.

We have mentioned none of the valuable portions of Mr. Waterman's book. These portions are not small, nor unimportant; they indicate

much ability, and even more patience and industry; and the number of late American cases, in various States, shows that his attention has been directed to decisions illustrative of his subject, whether delivered in the courts of his own State, or in the more distant parts of our large country. But we have devoted so much of our time, and so much room, to the consideration of his unhappy prolixity, that we can only glance at the merits of the book. Mr. Waterman can hardly complain of this with justice. For, by the course he has taken, he has wronged, though no doubt unintentionally, every body in any way interested. The first volume is entered by Mr. Graham's next of kin; they are directly injured by increasing the size and cost of the book so unreasonably as greatly to diminish its sale. The profession may well complain that a useful book that was out of print can be had only by paying three times as much as a reprint of it would cost. And we, and all persons connected with the professions of the law and of literature, must regret to see a gentleman, who might distinguish himself in both, following a course so little calculated to reflect honor upon either.

COMMENTARIES ON THE CRIMINAL LAW. BY JOEL PRENTISS BISHOP. Author of "Commentaries on the Law of Marriage and Divorce." 1856. Vol. I. Complete in itself. Boston: Little, Brown & Co.

The author of this work is already favorably known to the legal profession and to the public from his valuable "Commentaries on the Law of Marriage and Divorce." In his new book, Mr. Bishop has undertaken to supply a great want, by writing a philosophical treatise on criminal jurisprudence. The common text-books on this subject are mere digests, stringing together the decisions and *dicta* of judges, under alphabetical titles of Arson, Burglary, Conspiracy, and the like. Such works are rarely *read*, although constantly referred to, for authorities on particular points.

This treatise is designed to be read and studied. It does not supersede the necessity of referring to Russell or Gabbett, but it makes the use of those compilations more valuable. It is an introduction to the study of criminal law; and we were glad to learn from some indications in its pages, that Mr. Bishop intends at some future time, to complete the more general work, for which this is an excellent introduction.

The first and second books of this volume treat of the common law in general, and of the construction of statutes. They are applicable to civil as well as to criminal cases; they display great labor of research, and the illustrations are very carefully selected from the decisions. The lawyer, who wishes to find the construction, which the courts have given to any particular word or phrase, may be disappointed when he skims over these chapters; but the student, who wishes to learn how courts generally construe statutes, cannot fail to profit by a careful perusal of them. As a matter of taste, we should have selected some less fanciful title for chapter VI. than "The Elasticity of Statutes"; but the value of the contents makes up for the unfortunate title.

The third book sheds much light on important and difficult class of questions as to the intent, which is necessary to constitute a criminal act. Under this head, we have valuable dissertations upon criminal carelessness, ignorance of law and fact, necessity and compulsion, the defences arising from coverture, infancy, and want of capacity. Book fourth treats of "the Act"; of the wrongs, noticed by courts; it aims to teach us, how far the act must be wrong; how it must concern the public; how far the consent of the injured party will excuse the act, &c. &c. The manner in which criminal law protects the public, and the manner in

which it protects individuals, are discussed with great ability. An immense number of authorities is collected; but here and throughout the volume, only the result is given in the text, and the mere reference in the note. Mr. Bishop has not filled his pages with long extracts from judges' opinions, to weary the reader, and defraud the buyer of his book. The point is given in a compact form, the reason is stated, also, and those who wish to learn more, will find abundant references at the foot of the page. We regret that the author should have given us the singular "Diagram of Crime," which is designed to make clearer the relation between Treason, Felony and Misdemeanor, Misprision, Compounding, &c.; and we cannot regard the C. D. N. O. and G. H. K. illustrations otherwise than as blemishes upon the valuable pages that follow. These remarks will also apply to the complications of circles, with which the ingenious author has attempted to represent "Crimes as to one another." The chapters upon "Accessories and Attempts" are peculiarly interesting, and this portion of the work is not only valuable to the student, as storing his mind with legal principles, but they will be of great utility to the practitioner, furnishing him with a mine of well arranged precedents.

The fifth book treats of the Locality of Crime; the sixth of its consequences. We would especially commend Mr. Bishop's observations on the vexed question as to goods stolen in one State and carried into another. The following extract will give a good specimen of the author's style of reasoning:

"Conflicting opinions have been entertained on the question, whether, if a man commits larceny of goods in one county or State, and carries the goods into another, he can be indicted for larceny of them in the latter, in analogy to the rule which holds where goods are stolen in one county, and conveyed by the thief into another one, in the same State. Now this, which is the common form of the question, betrays the misapprehension out of which the differences have arisen. Our courts cannot punish offences against a foreign government, nor, therefore, take cognizance of such offences. Neither, on the other hand, can a man be heard to excuse himself for a criminal act here, by alleging that he did the same thing elsewhere. From which two propositions we deduce the answer to our question, so far as it rests on other foundation than specific authority. And thus we conclude, that a man can neither be punished nor escape punishment for larceny here, by reason of his having committed it in another state or country.

"Therefore, where a jury, sitting in Pennsylvania, found by special verdict, 'that the defendant did feloniously steal, take, and carry away the goods . . . . . within the State of Delaware, and that he brought the same into the city of Philadelphia, within the jurisdiction of this court,' the judges very properly refused to sentence the prisoner; while, probably, the jury might, on the facts, have properly convicted him of larceny in Pennsylvania. Always when a man has property with him in this State, we may look into the legal relation he sustains to it; if he has stolen it in another State, he has not the right even to the custody of it here; and the rule in larceny is, that when a man, having in his mind the intent to steal, makes any removal or carrying away of personal property to which he has no right, he commits the crime. And, therefore, in the above case, the finding of the jury, in so far as it related to a larceny in Delaware, was wholly irrelevant; and, in omitting to say whether there was a removing of the goods by trespass with the intent to steal them in Pennsylvania, it was defective.

"We thus see, that the question now before us has, in one aspect, an analogy to the case of larceny in one county and the goods carried into

another, within the same State; while, in another aspect, the analogy fails. In respect to two counties, there must be a complete offence in the one to which the stolen property is conveyed; and so is the law in respect to the two States. But as regards the two counties, we may establish in proof, the crime in the first locality, as a foundation for the crime in the second to rest upon; while we can look at what was done in the first of the two States no further than to ascertain the legal relation which the party accused sustained toward the property, after he had passed over into the second."

After stating the authorities upon this point, the learned author proceeds:

"And it is a little remarkable, that, in all the discussion which this point has received, the precise aspect of it presented in the foregoing sections, has been no more than indistinctly shadowed; while evidently the view here taken places it, to one familiar with all the principles governing such questions, beyond doubt. Where that view, however, has partially appeared, an objection to it seems to have arisen, that it will render the prisoner liable to be twice convicted and punished for one offence, in violation of the spirit of the common law; but this objection, we shall see in the proper place, is without weight. The common law either admits of two convictions in such a case, or it does not; if it does, there is nothing in the objection; if it does not, then in whatever locality the first conviction takes place, it may be pleaded in bar of the second. But the common law knows no such plea in defence of a prosecution as *liability to indictment* elsewhere." §§ 595, 596, 597, 599.

We cannot close this brief notice, without suggesting that there are some defects in style unworthy of the general character of the work. We read in § 403, that "the wide path of human improvement in all ages and countries has been macadamized with human bones, and wet with blood." In § 9, too, we learn that the legal river *gurgles* in Asia, and *stagnates* in Africa. These expressions do not detract from the solid merits of the work; but they pain its readers, and repel those, whose taste is fastidious. As we hope to read many volumes from the same industrious author, we make this suggestion in kindness, and hope it will be taken in good part.

On the whole, we look upon this treatise as a valuable addition to our legal literature, and as a credit to its author. We can hardly give too much praise to the faithfulness with which he has sought authorities, or to the labor by which he has condensed their points and reasonings. The study of criminal law is too much neglected. Indeed, it is matter of boasting with many eminent lawyers, that they know nothing of its distinctive principles. It must be that their clients sometimes suffer from this ignorance. We hope that the appearance of this commentary will attract attention to the importance of the subject.

THE PRACTICE IN COURTS OF JUSTICE IN ENGLAND AND THE UNITED STATES. By CONWAY ROBINSON, of Richmond, Virginia. Volume I: As to the Time and Place of a Transaction or Proceeding; treating chiefly of the conflict of laws, and the Statute of Limitations. Volume II: Treating of the Subject-matter of Personal Actions, in other words of the right of action. Richmond: A. Morris. 1854–5.

This work has a much larger scope than works on practice are generally understood to cover.

> Quis, quid, coram quo, quo jure petatur, et a quo
> Recte compositus quisque libellus habet,

is the old distich about a bill in equity, and so Mr. Robinson in the

preface to his first volume, says: "When I think of the time and labor expended on the present volume, and consider that this is but the beginning of the work, I am at times discouraged by the magnitude of the undertaking. It must treat of the causes for which personal actions may be maintained, the parties, pleadings, and evidence, as well as the proceedings generally therein from the commencing to the final process; the proceedings in suits for land, in other civil cases at law, in cases before courts of probate and other cases of a miscellaneous nature; the cases for equitable jurisdiction, the rules for the limitation thereof, the parties, pleadings and proceedings therein; and the proceedings in criminal causes." What rights may be enforced by legal proceedings, and how, when and where, Mr. Robinson proposes to tell us. He brings to his work much ability and long practical experience. To say that a work of such extent has been done without imperfection or error, would be to assign him a most elevated position as a student and expounder of jurisprudence. To assume to pass such a judgment would be to claim for ourselves an equal eminence. We shall, however, assume to express our belief that the work is a valuable addition to the legal literature of America, and creditable to the bar, which the learned author adorns. The topics are treated with learning and precision, and with that legal discrimination which is rarely found except in persons whose studies have been directed and rendered practical by the correcting hand of experience. But our readers will be better served by a slight sketch of the subjects treated than any detailed expression of our opinion.

In the first volume the author considers, first, what state or country is to be looked to to ascertain the law that governs, and remarks on the conflict of laws and the rule of decision. These points are of great and increasing importance in this country from the number of independent sovereignties which make up the federal whole. Under this head the author treats of fugitives from justice, and slaves going to a free State; of the powers of non-resident guardians, &c.; of the redress of private torts, committed on one country in another; contracts; marriage and divorce; property; estates of deceased persons; decrees and other judicial acts; proof of foreign laws, &c.; war and aliens; suits by or against foreign sovereigns and corporations; by assignees, administrators, and heirs, &c.; when and how suits may be brought, and how defended; in what locality and tribunal brought.

The second part of this volume "as to the time of a transaction or proceeding" discusses the law of Sundays and holidays; computation of time; time for bringing personal actions generally, including the broad subject of limitations.

The second volume takes up "the subject-matter of personal actions," or, in other words, the right of action. On a sealed instrument, on bills of exchange, notes and other unsealed instruments; on promises generally expressed and implied; by owners of goods and chattels against adverse claimants or bailees, and wrong-doers.

We trust Mr. Robinson may find time and inclination to complete his design. His work will fill a place yet vacant, and we believe fill it well.

We do not like to see so many errata, or to look upon paper quite so dingy, as the publishers have given us in his first volume. The "gladsome light of jurisprudence" should shine through a more translucent medium.

LIVINGSTON'S LAW REGISTER, containing a complete list of lawyers in the United States, designating who are in practice, retired, on the bench, and all law firms, with the individual partners, &c., &c. By JOHN LIVINGSTON. New York: 187 Broadway. May, 1856.

Mr. Livingston's Register is a very useful book of reference for merchants and lawyers having occasion for professional services in any distant town or State. Judging from the list of lawyers in Massachusetts, we have no doubt that this book is as accurate and reliable as one of the kind can be made. It appears by an examination of the lists that the United States are fortunate enough to possess about 30,000 lawyers, and some of the principal cities as follows:

New York	about	1800	Cincinnati	about	350
Philadelphia	"	500	San Francisco	"	275
Boston	"	400	St. Louis	"	200
Baltimore	"	350			

We believe they will compare favorably in point of integrity and intelligence with any other class of men in the country.

Obituary Notice.

HON. LUTHER S. CUSHING, of Boston, died at his residence in that city, on the 22d of June, 1856, aged exactly fifty-three years, having been born June 22, 1803.

Mr. Cushing was a gentleman of kind and engaging manners, and of the strictest integrity and virtue, much honored and beloved in the community in which he lived. As a lawyer, in which point of view it becomes us chiefly to consider him, he was remarkable for attainments quite out of the ordinary range of legal studies in this part of the country. His knowledge of the civil law was shown by his lectures on that subject at the University in Cambridge, by translations of valuable foreign works, and by essays contributed to the "Jurist," of which he was at one time an editor. To show the high estimation in which he was held as a lawyer and jurist by those most competent to judge, it is sufficient to enumerate the offices which he successively filled. He was for many years Clerk of the House of Representatives of Massachusetts; he was lecturer at Cambridge; judge of the Court of Common Pleas; and upon the appointment of Mr. Metcalf to the bench of the Supreme Court, Mr. Cushing succeeded him as Reporter of its decisions. About two years since he was obliged, by failing health, to resign this situation, and the rapid advance of his disease prevented the completion of his reports, which, however, he recently placed in the hands of a gentleman very well qualified to do them justice, and who is diligently employed in preparing them for the press.

The original works by which Mr. Cushing will be remembered are his "Manual," containing the rule of proceeding and debate in deliberative assemblies, which, since its appearance in 1845, has been the standard authority of parliamentary practice throughout the country, and by the more comprehensive work on parliamentary law, which appeared only a few days before the lamented decease of its author. These works will entitle Mr. Cushing to lasting and honorable mention as one who has done good service to the law and literature of the United States.

Insolvents in Massachusetts.

Name of Insolvent.	Residence.	Commencement of Proceedings.	Name of Commissioner.
Adams, David	Lynn,	May 7, 1856.	Henry B. Fernald.
Adams, George	Hingham,	March 20,	Perez Simmons.
Albro, Moses	Fall River,	May 6,	E. P. Hathaway.
Allen, Frederic	Worcester,	" 9,	Alexander H. Bullock.
Battles, Augustus S. (a)	Lynn,	" 1,	John G. King.
Casey, Joseph	Boston,	" 30,	Isaac Ames.
Chandler, Benjamin jr.	Boston,	" 29,	Isaac Ames.
Clapp, Edwin M. (b)	Milton,	" 15,	Charles Endicott.
Clapp, Lewis J. (b)	Milton,	" 15,	Charles Endicott.
Clark, Wm. G.	Charlestown,	" 27,	L. J. Fletcher.
Clemens, Joseph R.	Ashfield,	" 20,	H. G Newcomb.
Cogswell, William	Bradford	" 1,	Thomas A Parsons.
Colman, Philander S.	Orange,	" 20,	H. G. Newcomb.
Currier, William (c)	Newburyport,	" 21,	Henry B Fernald.
Davies, John A.	Boston,	" 16,	Isaac Ames.
Forbes, Wm A.	Sheffield,	" 5,	James Bradford.
Harnden, Albert	Wilmington,	" 6,	John W. Bacon.
Henry, Bryant T. (d)	Charlestown,	" 13,	Isaac Ames.
Hepworth, Samuel S.	Boston,	" 15,	Isaac Ames.
Hill, Caleb	Dorchester,	" 7,	Charles Endicott.
Hobbs, John jr. (e)	Woburn,	" 1,	Isaac Ames.
Holt, Horace	Winchester,	" 10,	John W. Bacon.
Howard, Otis J.	Hingham,	April 29,	Perez Simmons.
Kellogg, Henry C.	Lynn,	May 31,	John G. King.
Knight, Allen	Danvers,	" 26,	John G King.
Lane, Amos S.	Danvers,	" 13,	John G King.
Lovejoy, Edwin A. (e)	Boston,	" 1,	Isaac Ames.
Marckwald, Samuel (f)	Boston,	" 20,	John M. Williams.
Mayo, John M.	Boston,	" 8,	Isaac Ames.
Osbourn, Leander	East Bridgewater,	April 1.	Perez Simmons.
Perry, Wm. W.	Randolph,	May 14,	Charles Endicott,
Pike, Hiram	Salisbury,	April 21,	Henry B. Fernald.
Pratt, John W. (g)	East Bridgewater,	June 11,	Perez Simmons.
Reed, James M. (h)	Boston,	May 6,	Isaac Ames.
Rice, Henry S. (d)	Cambridge,	" 13,	Isaac Ames.
Richardson, James C. (e)	Malden,	" 1,	Isaac Ames.
Roberts, Thomas (i)	Lynn,	" 7,	John G. King.
Saroni, Adolph S. (f)	Boston,	" 20,	John M. Williams.
Shattuck, Daniel (j)	Boston,	April 7,	John M. Williams.
Shattuck, John S. (j)	Boston,	" 7,	John M. Williams.
Shattuck, Rufus	Pepperell,	May 14,	L. J Fletcher.
Sheafe, Charles C.	Newton,	" 5,	L. J. Fletcher.
Sheldon, Charles H. (l)	Salem,	" 12,	John G King.
Sweetser, Charles A.	Lynn,	" 1,	John G King.
Tasker, John C. (a)	Lowell,	" 1,	John G King
Thompson, Jonathan	Stoneham,	" 13,	John W. Bacon.
Tilton, James A.	Newburyport,	" 21,	Henry B. Fernald.
Townsend, James L. (c)	Newburyport,	" 21,	Henry B. Fernald.
Underwood, Wm. E.	Boston,	" 26,	Isaac Ames.
Vose, Edward A. (k)	Boston,	" 6,	Isaac Ames.
Wilkins, Charles	Danvers,	" 31	John G. King.
Williams, Wright W.	Boston,	" 6,	Isaac Ames.
Wright, George (k)	Hingham,	" 17,	Isaac Ames.
York, Charles E. (i)	Lynn,	" 7,	John G. King.
Young, Edwin R. (g)	East Bridgewater,	June 11,	Perez Simmons.
Young, Isaac (l)	Salem,	May 12,	John G. King.

(a) John C. Tasker & Co. "Business at Lynn."

(b) Copartners.

(c) Currier & Townsend.

(d) Henry, Rice & Co.

(e) James C. Richardson & Co.

(f) A. S. Saroni & Co.

(g) Pratt & Young.

(h) Edward A. Vose & Co.

(i) Roberts & York.

(j) Partners.

(k) In his individual capacity, and as partner of the firm of Blanchard, Wright & Co

(l) Partners.